Supreme Court, U. S.
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SUPREME COURT, U.S.

80-5727

NO. 80-

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

MONTY LEE EDDINGS,

Petitioner,

-v-

STATE OF OKLAHOMA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE OKLAHOMA COURT OF CRIMINAL APPEALS

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QUESTIONS PRESENTED

1. Whether the infliction of the death penal child who was sixteen at the time of the crime constitu and unusual punishment under the Eighth and Fourteenth to the Constitution of the United States?

2. Whether the Oklahoma Court of Criminal Ap construed or applied 21 Okla. State. §701.12(4) in an i vague or overbroad fashion in violation of the Eighth A and the Due Process Clause of the Fourteenth Amendment Constitution of the United States?

3. Whether a state is obligated by the Due I Clause and the Equal Protection Clause of the Fourteent to provide funds to all indigent capital defendants fo expert or investigative assistance when the state has a statute to provide assistance to those defendants in co a population exceeding 200,000 persons?

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THE OKLAHOMA COURT OF CRIMINAL APPEALS

Petitioner, Monty Lee Eddings prays that a Certiorari issue to review the judgment of the Oklah of Criminal Appeals in this case.

CITATION TO OPINION BELOW

The opinion of the Oklahoma Court of Crim is reported in Eddings v. State, 616 P.2d 1159, (Ok den. 566 Ed 2d 763 and is attached hereto as Append

JURISDICTION

The judgment of the Oklahoma Court of Cri was entered on March 21, 1980. A timely Petition f was denied on September 15, 1980, at which time the Criminal Appeals stayed the execution warrant for s pending appeal. This Court's jurisdiction is invok

to 28 U.S.C. §1257(3), petitioner having asserte
asserting herein deprivation of rights secured
States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Eighth Ame
Constitution of the United States, which provid
part:

> "nor cruel and unusual punishmen
> inflicted;"

and the Fourteenth Amendment to the Constitutio
States, which provides in relevant part:

> "No state shall . . . deprive an
> person of life, liberty, or pro
> without due process of law; nor
> to any person within its jurisd
> the equal protection of the law

2. This case also involves the follo
of the statutes of the State of Oklahoma:

21 Okla. Stat.

> §701.9 - Punishment for Murder
>
> A. A person who is convicted
> guilty or nolo contendere to mur
> first degree shall be punished b
> imprisonment for life.

21 Okla. Stat.

> §701.10 - Sentencing Proceeding
> Murder in the First De
>
> Upon conviction or adjudicatio
> a defendant of murder in the fir
> Court shall conduct a separate s
> ceeding to determine whether the
> be sentenced to death or life im
> proceeding shall be conducted by
> before the trial jury as soon as
> out presentence investigation.
> has been waived by the defendant
> if the defendant pleaded guilty
> the sentencing proceeding shall
> the court. In the sentencing pr
> may be presented as to any mitig
> or as to any of the aggravating
> ated in this act. Only such evi

as the state has made known to t
prior to his trial shall be admi
this section shall not be constr
the introduction of any evidence
lation of the Constitution of th
or of the State of Oklahoma. Th
defendant or his counsel shall b
present argument for or against

21 Okla. Stat.

§701.11 - Instructions - Jury fi
circumsta

In the sentencing proceeding,
instructions as determined by th
warranted by the evidence shall
charge and in writing to the jur
tion. The jury, if its verdict
recommendation of death, shall d
signed by the foreman of the jur
aggravating circumstance or circ
unanimously found beyond a reas
non-jury cases, the judge shall
tion. Unless at least one of th
aggravating circumstances enume
so found or if it is found that
circumstance is outweighed by th
or more mitigating circumstances
shall not be imposed. If the ju
reasonable time, agree as to pur
shall dismiss the jury and impos
prisonment for life.

21 Okla. Stat.

§701.12 - Aggravating Circumsta

Aggravating Circumstances shall

1. The defendant was previous
felony involving the threat or
the person;

2. The defendant knowingly c
of death to more than one perso

3. The person committed the
tion or the promise of remunera
another to commit the murder fo
the promise of remuneration;

4. The murder was especially
or cruel;

5. The murder was committed
avoiding or preventing a lawful
tion.

6. The murder was committed
serving a sentence of imprisonm
a felony; or,

7. The existence of a pro
defendant would commit crimi
that would constitute a cont
society.

21 Okla. Stat.

§701.13 - Death Penalty - Re

A. Whenever the death per
upon the judgment becoming f
the sentence shall be review
the Oklahoma Court of Crimin
of the trial court, within t
receiving the transcript to
Criminal Appeals together wi
by the clerk and a report by
notice shall set forth the t
of the case, the name of the
and address of his attorney,
of the judgment, the offense
prescribed. The report shal
standard questionnaire prepa
Oklahoma Court of Criminal A

B. The Oklahoma Court of
consider the punishment as w
enumerated by way of appeal.

C. With regard to the sen
determine:

1. Whether the sentence w
the influence of passion, pr
arbitrary factor;

2. Whether the evidence s
the judge's finding of a sta
circumstance as enumerated i

3. Whether the sentence w
disproportionate to the pena
cases, considering both the

D. Both the defendant and
right to submit briefs withi
the Court, and to present or

E. The court shall includ
reference to those similar c
consideration. In addition
ing correction of its errors
to review of the death sente
to:

1. Affirm the sentence of

2. Set the sentence aside
for modification of the sent
for life.

F. The sentence review sh
direct appeal, if taken, and

shall be consolidated
court shall render its
enumerated, the factua
verdict, and, the vali

STATEMENT OF TH

The Day of the Murder

On April 4, 1977, at the ag
months, Monty Lee Eddings ran away fr
with three friends, heading west in a
After picking up a hitchhiker outside
teenagers pulled into a Howard Johnso
As he was reentering the highway, Edd
onto the floor and momentarily lost c
it to swerve briefly into a shallow d
service station reported the incident
was having coffee inside the resterau
would investigate and subsequently ov
on the highway.

After the officer had motio
to pull over, he left his police car
on the driver's side. Eddings picked
the floor, turned around and fired on
at a distance of six to eight feet.
tering incoherently (T.42[illegible]). He was a
road.

___/ Each reference to the transcript
hearing held May 15 and 17, 1978 in
County, Oklahoma, will be indicated

Petitioner's Background

Monty Lee Eddings grew
father, who divorced Eddings' mot
old. Shortly after the divorce,
cycle policeman, an authoritarian
(T. 248). (A psychiatrist, later
at his sentencing hearing, testif
highway patrolman who had stopped
anger against "the policeman who
stole his mother away") (T. 251).

After the death of his
Monty was sent to live with his n
Monty with regularity (T. 163) an
his son (T. 180).

At about the age of fou
difficulty with the juvenile auth
throughout his chaotic early adol
shuttled back and forth between h
who exercised no discipline whats
by prostitution (T. 151, 153), an

In tests at the Eastern
arrest in 1977, Monty scored poor
normal intelligence, a mental age
three months, and a sociopathic c
191, 194).

The Certification Hearing

Subsequent to being cha
a juvenile certification hearing
of Creek County. The District Co

to stand trial as an adult fo
appealed to the Oklahoma Cour
an opinion on February 22, 19
under the age of 18, 584 P.2d

The Trial

On May 8, 1978, pet
contendere and was adjudged g
May 15, 1978, the State prese
hearing while all flags in th
official proclomation in hono
in the line of duty (T. 2).

The State's witness
patrolmen, the passengers in
by on the turnpike, a medical

On May 17, 1978, th
Eddings' juvenile officer, a
examined Eddings prior to the
sociologist from Oral Roberts
None of the three expert wit
more than an hour, and their
earlier, prior to the certifi
no funds, sought state assist
to do an adequate examination
but this request was denied.
to point out that the expert
obtain voluntarily had spoken
seen him in nearly a year. T
competence of the volunteer s
gical matters.

s
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by
llen

ssers-

ses:
o had
teer
chiatrist.
for
a year
o had
iatrist
[cite],
quick
to
not
ed the
ycholo-

The District Co
in support of the death s
atrocious and cruel," (T.
for the purpose of avoidi
prosecution (T. 287), and
threat to society (T. 288
mitigating factor, the ag
crime.

HOW THE FE
RAISED

1. In his firs
Oklahoma Court of Crimina
Eighth Amendment to the C
lutely preclude[s] the ex
crim committed as a juven
and unusual," Brief of Ap
petitioner's claim, holdi
unusual punishment to imp
Eddings v. State, supra,

In his Petition
petitioner alleged as his
persons for crimes commit
Petition at 1. The Petit
without opinion.

2. In a pre-tr
bill of particulars, whic
circumstances, petitioner
case were not especially
statutory terms would be

ctors
henious,
ommitted
st or
a
one
of the

ppeal to the
that the
es "abso-
dult for a
th cruel
urt rejuected
e cruel and
etitioner"

Brief,
cution of
unusual,"
Court

cutor's
aggravating
itioner's
nd that the
mployed in

petitioner's case. Du
petitioner renewed his
court deferred any dec
(T. 139-40).

After receip
found that "this parti
standards" (T. 206).

In his secon
asserted that the aggr
"snare any perpetrator
18 (emphasis added).
identical circumstanc
of that term" because
it was directed only
Brief of Appellant, a
circumstance had not

The Oklahom
that

> "[t]here ar
> he recogni
> which he h
> it. But [
> danger. I
> We believe
> in the per
> words of t
> and shocki
> and vile.'

Eddings v. State, sup

In his Peti
second proposition th
atrocious and cruel
vague and overbroad,"
without opinion.

3. On Apri
filed a motion allegi
trial court to author

s trial,
the trial
he proceedings

l court
se particular

, petitioner
n could
lant, at
d Florida's
'the vagueness
urt of Florida,
s crime,"
the aggravating

laim stating

danger:
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fficer
the
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nton

alleged as his
hrase "heinous,
onstitutionally
was denied

petitioner
uesting the
ic examination.

The motion was der

In his f

alleged that "give
an investigator or
Such circumstances
41. Petitioner al
(1971) psychiatric
"been apprehended
200,000 ... to pro
crime in larger co
crime elsewhere wo
of the Fourteenth

The Okla

that "the petition
investigator or ps
of law, but we hav
Nor are we offende
larger counties."

In his P

his sixth proposit
gative and psychia
of due process and
tion" Petition at
court without opir

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THE CO
CONSID
APPLIED
AND UNU
AND FOURTE

Defendar

months old when he committed the murder for which he has been sentenced to die. His childhood had been marred by an early divorce, a violent and deprived upbringing, and by the emotional turmoil that resulted from being moved back and forth between two sets of parents and the juvenile authorities. At the time the murder was committed, Monty Lee Eddings was in the process of running away from his "home" in Missouri.

This Petition raises the question of whether, in light of the "evolving standards of decency that mark the progress of a maturing society," Trop v. Dulles, 356 U.S. 86, 101 (1958), a state may continue to countenance the imposition of the death penalty upon a child. This question was reversed by this Court in its decision in Bell v. Ohio, 438 U.S. 637, 642 n. (1978).

The notion that the Eighth Amendment may forbid the imposition of death as cruel and unusual for certain offenses is not, of course, a new one. In Coker v. Georgia, 433 U.S. 584 (1976), this Court determined that the death penalty could not constitutionally be carried out against rapists because it was "excessive" or "grossly out of proportion" to the crime. Id. at 592. As in Gregg v. Georgia, 428 U.S. 153 (1976), the Court in Coker looked to "objective factors" including "public attitudes concerning a particular sentence, history and precedent, legislative attitudes and the response of juries reflected in their sentencing decisions," Coker v. Georgia, supra, 433 U.S. at 592, to determine whether the punishment imposed was excessive.

The gross disproportionality of child executions is evidenced by widespread state statute and policies which protect juveniles from criminal court proceedings, by nationwide legislative executive and judicial recognition of a defendant's youth as an important mitigating factor in capital and non-capital cases, by international condemnation of child execution, and by the strong reluctance of American courts and juries to sentence children to

death. The extreme rarity of such sentences and the large numb of children who are automatically disqualified from being cons for the punishment operates to make the imposition of death in cases involving young persons "freakish" in its rarity. Furma Georgia, 408 U.S. 238, 310 (1972) (Stewart J. concurring).

In virtually every state, juvenile statutes have long be in operation to protect delinquent children from adult crimina proceedings.[2] Many states provide for some form of judicial waiver or certification procedure, usually with a minimum age limitation below which the juvenile is totally insulated.[3]

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1. H. Lou, Juvenile Courts in the United States, (1927); M. Rosenheim, Justice for the Child, (1962); Mac, "Juvenil Courts," 23 Harv. L. Rev. 104 (1909); Paulsen, "Fairness to Juvenile Offenders," 41 Minn. L. Rev. 547 (1957); Ferst Courtless, "The Beginning of Juvenile Justice - Police Pra and Juvenile Offenders," Vand. L. Rev. 567 (1969); Fox, "T Reform of Juvenile Justice & Historical Perspectives," 22 Stan. L. Rev. 1187 (1970); Mennel, "Origins of Juvenile Courts: Changing Perspectives and Legal Rights of Juvenile Delinquents." 18 Crime and Delinquency 68 (1972).

2. Ala. Code §12-15-34(A) (1975); Ark. Stat. Ann. §45-47, 45- (Supp. 1979); Colo. Rev. Stat. Ann. §19-1-104(4)(A) (1978) Conn. Gen. Stat. Ann. §46(D) - 120 (Supp. 1979; Del. Code Tit. 10 §937(C) (5), 938(C) (Supp. 1978); 18 D.C. Code §16 (A) (1973); Fla. Stat. Ann. §39.02(5)(A)-(B) (Supp. 1979); Ga. Code Ann. §24(A)-401(C) (1), (3), (Supp. 1979); Hawaii Rev. Stat. §571-22(A) (1976); Idaho Code §16-1806(1 (1979); Ill. Ann. Stat. Tit. 37, §702-2--5 (1972); Ind. Co Ann. §31-6-2-4(B)-(D) (Supp. 1979); Ky. Rev. Stat. Ann. §2 (1) (Supp. 1978); La. Rev. Stat. Ann. §13:151.1 (A) (1), ((Supp. 1979); Ma. Rev. Stat. Ann. Tit. 15, §3101(4)(A) (Su 1979); Md. Code Ann., Cts. & Jud. Troc. §3-817(A) (Supp. 1 Mass. Gen. Laws Ann. Ch. 119, §61 (Supp. 1979); Mich. Comp Laws Ann. §712(A).4(1) (Supp. 1979); Miss. Code Ann. §43-2 105(J), 43-21-159(3) (Supp. 1979); Mo. Ann. Stat. §211.071 Mont. Code Ann. §41-5-206(1)(A) (1979); Neb. Rev. Stat. §4 (3)(B)-(C) (1978); Nev. Rev. Stat. §62.080 (1977); N.H. Re Stat. Ann. §169-B:24 (Supp. (1979); N.J. Stat. Ann. §2(A): (A)-(B) 2(A):4-49 (Supp. 1979); N.M. Stat. Ann. §32-1-29(A 32-1-30(A)(1) (1978); N.Y. Fam. Ct. Act §712(A)(ii) (McKin Supp. 1979); N.Y. Penal Law §10(18), 30(2) (McKinney Supp. N.Y. Crim. Proc. Law §180.75, 190.71, 210.43, 220.10(G) (McKinney Supp. 1979); N.C. Gen. Stat. §7A-507(1), (12), ((20), (21), (28), (Supp. 1979); N.D. Cent. Code §27-20-34((Supp. 1979); Ohio Rev. Code Ann. §2151.26(A) (1978); Okla Stat. Ann. Tit. 10, §1112(B), 1104.2 (Supp. 1979); Pa. Sta Ann. Tit. 42, §6355(A)(1), (E), 6302; 6322(A), 6355(E) (19 R.I. Gen. Laws Ann. §14-1-7, 14-1-7.1 (Supp. 1978); S.C. C §14-21-20(C), 14-21-510(C) (Supp. 1978); S.D. Compiled Law §26-11-3 (1976); Tenn. Code Ann. §37-234(A)(1) (1977); Tex Code Ann. §54.02(A)(1)-(2)(J) (197 & Supp. 1980); Utah Cod Ann §78-38-25 (1977); Vt. Stat. Ann. Tit. 33, §"632(A)(1), 635(D) (Supp. 1979); Va. Code Ann. §16-1-269(A) (Supp. 197 W.Va. Code Ann. §49-5-10(C)-(D) (Supp. 1979); Wyo. Stat. A §14-6-203(C), 14-6-211 (1978).

Other states provide for some form of legislative waiver of proceedings, with age limits depending on the type of crime punishment.[4]

As this Court noted in Kent v. United States, 383 541 (1966), "the objectives [of juvenile proceedings] are t provide measures of guidance and rehabilitation for the chi and protection for society." See generally In re Gault, 38 U.S. 1 (1967).

The juvenile laws are rehabilitative in nature, b on the assumption that childi n and adolescents are not who responsible for their actions, and that they deserve the op for guidance and reform, so as to have the chance to lead p ductive adult lives.[5] The rehabilitative theory of puni is perhaps best suited to the juvenile offender, since reha techniques may have a greater chance of success if begun wh the child's personality is still in a state of relative flu As is true in petitioner's case, the juvenile offender is o the product of traumatic and underprivileged circumstances his control, and is uniquely deserving of a second chance.

The reluctance of the states to mete out their ha remedies upon their children is further evidenced by the wi spread specification of age as an absolute preclusion or as mitigating factor in the application of the death penalty. least four states specifically prohibit the imposition of t death penalty on children under sixteen, seventeen or eight years of age.[6] Over thirteen states have specified defendant

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4. See Feld, Barry C. "Reference of Juvenile Offenders for Prosecution: The Legislative Alternative to Asking Una able Questions," Minnesota Law Review 62: 515-618 (Apr July, 1978), especially p. 526 (no. 38) and p. 556 (n. This article also outlines the history of the "rehabilit ideal" in juvenile statutes.

5. Feld, supra, at 516.

6. Penal Code §190.5 (West. Supp. 1978) Nev. Rev. Stat. §176 & Supp 1977); Tenn. Code Ann. 39-2404(h)(i)(1) (Supp 19 Penal Code tit. 1 §807(d) (Vernon Supp. 1978).

youth as a mitigating factor in capital sentencing.[7]

The Model Penal Code recognized, as early as 1
"the youth of the defendant at the time of the crime," t
a mitigating circumstance, ALI Model Penal Code & 210.6
Official Draft 1962). This Court has also noted the imp
of the defendant's youth as a mitigating factor in capit
ing. See Roberts (Harry) v. Louisiana, 431 U.S. 633,637
Lenient state policy towards juvenile murder defendants
reinforced by the high rate of executive commutations of
death penalty for applicants under the age of 20.[8] Exe
pardon is presently available for a youth in every state
permits capital punishment.

Execution of the young is repudiated not only
most of the United States, but in other countries as wel
October 5, 1977, President Jimmy Carter signed the Inter
Covenant on Civil and Political Rights, as part of the I
Bill of Human Rights. Part III, Article 6, Clause 5 of t
provides that "Sentence of death shall not be imposed fo
committed by persons below eighteen years of age and sha
be carried out on pregnant women." International Bill o
Rights, New York: United Nations, 1978 (p.23) (emphasis
In reserving the right of the United States to "impose
punishment on any person duly convicted," the State Dep
noted that the "[purpose of the reservation] was certai
the preservation of any right to execute children or pr
women, something never done in the United States.

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7. See Conn. Gen. Stat. Ann. §63a-46a(f)(1) (West. Sup
Fla. Stat. Ann. §921.141(6)(g) (West Supp. 1978); I
Stat. ch.38 §9-1(b) (Smith Hurd Supp. 1978); Ky. Re
§532.025(b)(8); La. Code Crim. Pro. art. 905.5(f)(S
Md. Ann. Code art. 27 §134(b)(2) (Supp. 1977); Mo.
§565.012(3)(7)(Vernon Supp. 1978); Neb. Rev. Stat.
(1975); N.C. Gen. Stat. §15A 2000(f)(7) (1978); 18P
Stat. Ann. §1311(d)(2)(i) (Supp. 1978); Utah Code A
(1)(e) (Supp. 1977); Wash. Rev. Code §9A.32.045(2)(
1978); Wyo. Stat. Ann. §6-4-102(j)(vii)(1977).

8. H. BEDAU, The Death Penalty in America, 420 (Anchor

International Human Rights Treaties, Hearings befor
of Foreign Relations, 96th Congress, First Session,
14, 15, 16, and 19, 1979 (p.55).

To date, the Covenant on Civil and Politi
has been signed and/or ratified by 73 nations, incl
Britain, West Germany, Japan, Israel, and the U.S.S

The framers of the Eighth Amendment were
a legacy of brutal and excessive punishments which
the adoption of the English Bill of Rights in 1689.
legal system had discriminated little on the basis
"Adolescents as well as children could be -- and ac
sentenced to death and even executed."[10] Yet eve
the execution of children was abhorred by public se

The actual imposition of the death penalt
has become so rare in this country as to be practi
existent. A history of execution in the United Sta
only twelve executions of sixteen year old children
one child aged less than sixteen has ever been exec
of 5,706 total United States executions, and 3,128
for which age data is available. The most recent o

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9. See generally Weissbrodt, David, "U.S. Ratifica
Human Rights Covenants" Minnesota Law Review 6
1978). The U.S. Congress has not yet ratified
on Civil and Political Rights.

See "Multilateral Treaties in respect of which
General Performs Depositary Functions; List of
Ratifications, Accessions, etc. as at 31 Decemb
New York: United Nations, 1980, (pp.111-112).

10. L. Radzinowicz, A History if English Criminal L
"The Movement for Reform 11 (London, 1948).

11. Ibid, at 13.

executions occurred in 1948.[12]

The decrease in executions of young pe
is demonstrated by the total figures for all per
age of twenty. Prior to 1950, 229 teenagers wer
of 2,678 executions with available age data). S
26 teenagers have been executed (out of 450 exec
able age data) (Bowers). As of December 31, 197
prisoners out of 444 on death row were under twe
age.[13]

The States of Missouri and Oklahoma a
in agreement with international condemnation of
In Monty Lee Eddings' home state of Missouri, nc
the age of twenty has ever been executed. In Ok
two teenagers have ever been executed, one in 1
in 1937. The youngest person ever to be execut
was eighteen years old when he was received in

Indeed, fifty-six years ago, the Oklal
Criminal Appeals, in reversing the death senten
year old boy, wrote that,

> "If this offender had been a person o
> mature years and understanding under
> cumstances like these, this court wou
> not hesitate for a moment in affirmin
> death penalty. But here our juvenile
> statutes and the policy towards juven
> offenders are involved. . ."
>
> "It was the intention of the Legislat
> that the death penalty should be infl
> only where the offender was both culp
> and responsible in the superlative de
> This crime was reprehensible in the h
> degree, but the record shows that the
> trator, by reason of his youth, his l
> home training and unfavorable environ
> probably had not had adequate compreh
> of the enormity of the offense or of
> criminal responsibility."

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12. W. Bowers, Executions in America, (Lexingt

13. United States Department of Commerce, Bure
Statistical Abstract of the United States:
ed.)

Ridge v. State, 28 Okla. Cr. 150, 229 P.649

The defendant submits that the exe year old "criminal" in the year 1980 is the and unusual punishment. The execution of An nonexistent in practice and is barred by eve standard for capital sentencing. The Court to consider whether the State of Oklahoma ma be permitted to enforce this freakish penalt case.

II.

THE COURT SHOULD GRANT CERTIORAR CONSIDER WHETHER THE COURT'S TREA OF STATUTORY AGGRAVATING CIRCUMST IS UNCONSTITUTIONALLY OVERBROAD IMPERMISSABLY DISTORTS THE WEIGH PROCESS REQUIRED TO PREVENT ARBI INFLICTION OF THE DEATH PENAL

Section 701.12(4) of the Oklahoma (21 Os. Supp. 1978 §701.9-701.15) identifies circumstance that a murder was "especially h or cruel." A similar statutory provision wa face in Gregg v. Georgia, 428 U.S. 153 (1976 that the state supreme court would not adopt construction" as to allow imposition of the any murder case" id. at 201 (opinion of Stew Stevens, JJ.) In Proffit v. Florida, 428 U. an identical provision was upheld because it by the state court interpretation. In Godfr 64 L.Ed.2d 398 (1980), this Court again revi statutory provision and found that the law h narrowed to "Distinguish [Godfrey's] case, i penalty was imposed, from the many cases in id. at 409.

In the present case, both the Dist Oklahoma Court of Criminal Appeals failed to

similar clause in any meaningful way. T
was killed by a single shotgun blast fir
vehicle at a distance of six to eight fe
not preceded by any physical or mental t
death was completely unexpected , unprov
taneous.

The extremely broad interpreta
this case will make meaningful comparati
in the future. The District Court's fac
definitions of the statutory language co
any murder committed in the State of Okl

> Insofar as aggravation is conc
> does find beyond a reasonable
> particular time, that the firs
> leged by the State of this par
> henious, atrocious and cruel,
> a reasonable doubt at this tim
> crime does meet those particul
> regard, the Court particularly
> the henious crime is concerned
> I have researched indicates to
> was an extremely wicked or sho
> And this supports the Court's
> that aspect is concerned. Ins
> the Court finds beyond a reasc
> this crime was an atrocious cr
> ally find that the definition
> outrageously wicked and vile.
> the definition of cruel that I
> that it must be designed to in
> of pain, utter indifference to
> suffering of others. I find c
> lar definition to be complied
> able doubt, and that is that i
> flict a high degree of pain, a
> difference to the rights of Pa

(T. 286-287). The Oklahoma Court of Cri
suit in affirming the sentence below, ca
words of the Florida Court, 'extremely w
evil,' and 'outrageously wicked and vile'
a high degree of pain with utter indiffe
of others.' "Eddings v. State, supra, 6
as this Court has noted in Godfrey v. Ge
is nothing in these few words, standing
inherent restraint on the arbitrary and

of the death sentence" id. at 406.

It is clear from the record
case do not approach the level of "e
or atrocious" behavior found in prio
Florida, 428 U.S. 242, 255 n. 12. P
in fact far less reprehensible than
Godfrey v. Georgia, in which this Co
Court's interpretation of a similar
overbroad.[14]

The Defendant in Godfrey c
trailer, first shot his wife in the
and mother-in-law, then struck his d
the barrel of the gun, reloaded the
to shoot his mother-in-law, "whose l
being must have been as terrifying a
id. at 419 (Rehnquist, J., dissentin

In the present case, by co
was shot at a distance of six to eig
and presumably died instantaneously.
present case filled out a "Report of
he answered "no" to the question: "
harmed or tortured prior to death?"

Apparently the Oklahoma co
argument that the "cold-blooded murd
the performance of his duties is per
and atrocious" (Brief of Appellee, P
Appeals stated, "We believe that thi

---

14. The Oklahoma court's failure to
gravating circumstance results
to compare the death sentence i
other death sentences imposed u
atrocious, or cruel" clause. S
were decided on the basis of th
to interpret the clause, as of
of looking to death sentences i
with similar aggravating circum

in the performance of his duties
and 'shockingly evil,' and 'outra
State, supra, 616 P.2d at 1168.

The error of the Oklah
The Oklahoma statutory scheme pr
circumstance and that court was
circumstance that has been speci
legislature. In light of this C
Georgia, it is axiomatic that t
cannot invent new statutory prov
See generally Presnell v. Georgi

III.

THE COURT SHOULD GRA
CONSIDER IF A STAT
PROVIDE FUNDS FOR AN
FOR A PSYCHIATRIST
INDIGENT DEFENDAN
POPULOUS COUNTIES
DUE PROCEES AND EQU
DENY SUCH ASSISTANC
CAPITAL DEFENDANT
POPULOUS

The circumstances of t
rise to this case and petitioner
the need for mental health exper
at trial. Monty Lee Eddings cam
he was a victim of commonplace v
Highway Patrolman stepfather, it
thorough psychiatric examination
gating significance concerning p
conscience motivation in this ca
motion requesting that he be pro
a psychiatric examination was de
denial has been upheld by the Ok
even though had petitioner's cri
county, such assistance would ha

15. 22 Okla. Stat. §1271 (1971)

gs v.

a

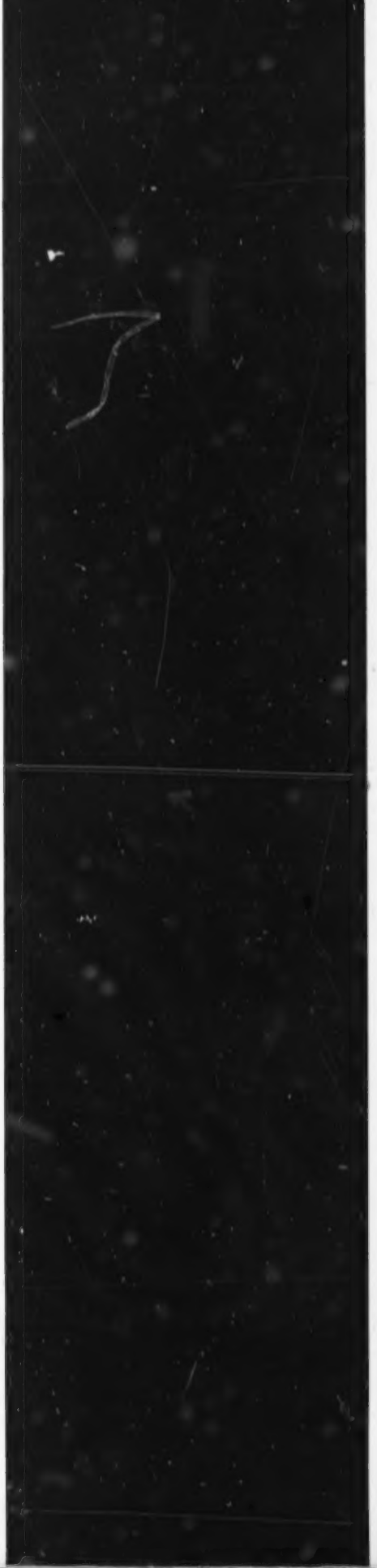
an v.

It is a basic princ
in access to the instruments
when based on the financial s
nant to the Constitution. Rol
42 (1967). The State is requ
tools of an adequate defense
404 U.S. 226, 227 (1971), to
right to effective assistance
as in the present case, violat
rights are argued. See Wolff
(1974). The right to effecti
ficant in death cases, where
to see that every safeguard i
428 U.S. 153, 187 (1976).

The indigent crimina
the courts extends beyond the
"[T]he right to counsel is mea
to make an effective defense b
the specialized testimony whic
McCollum, 231 F. Supp. 560, 56
672 (5th Cir. 1965).

This Court should gr
proper extent of expert psycho
defendants in capital cases, w
bearing on the finding of a ps

Proper tests for the
an indigent defendant are whet
engaged by a counsel for a non
United States, 498 F.2d 505 (8
attorney, United States v. Har
1975). In considering the sco
Act, the United States Circuit
that psychological assistance
of "expert services," United S



(D.C. Cir. 1973) and that
psychological assistance
pay and whether such assi
defense. See also United
Cir. 1976).

The indigent de
psychological assistance
phase of a capital case,
of a mitigating factor.
this Court held that "The
ment require that the sen
ing as a mitigating facto
or record or any of the c
defendant proffers as a
id. at 601. To deny an i
to establish such a mitig
its consideration.

In the present
sentencing phase were ina
the mitigating factor of
at the time the crime was
included a Court-appointe
and a private psychiatris
viewed defendant for more
were conducted prior to t
funds for adequate assist
case simply could not be

Petitioner pray
be granted.

IN THE COURT OF CRI

MONTY LEE EDDINGS,

Pet

-vs-

THE STATE OF OKLAHOMA,

Res

BRETT, Judge:

Monty Lee Edding
on April 4, 1977. Becau
have him certified to
granted by the District
certification on appea
(1978), cert. denied,
(1978). Subsequently,
a charge of Murder in t
County, Case No. CRF-7
and mitigating circumst
death. Title 22 O.S.
effect of a plea of nol
plea of guilty; and for
tion for certiorari.

Title 21 O.S.Su
review the propriety o
addition to any direct
death, but the Statute
review shall be consol
both the State and the
present oral argument
argued on the 7th day o

The petitioner's

Oklahoma Highway Patrol. The testimony of witnesses established that the petitioner had taken his brother's automobile, and that he and his sister and two friends had run away from their homes in Missouri. Before leaving, the petitioner had taken three of his father's firearms and had shortened the barrel on at least one--a .410 gauge shotgun. Before getting to the Turner Turnpike at the Tulsa gate, the group picked up a hitchhiker. They stopped at a service station/coffee shop for refreshments, and as they were leaving, the petitioner, who was driving, lost control of the car briefly because he had dropped his cigarette and was trying to find it. The car went over a curb and down into the bar ditch before the petitioner regained control, but he pulled back onto the highway and continued toward Oklahoma City. A man who saw the incident told Patrolman Crabtree, who was in the coffee shop, and the officer said he would check on the matter.

As the runaways were driving along, one of the passengers in the back seat said there was a police car behind them. The petitioner said, "If the fucking cop harrasses me I'll shoot him." The passengers treated the remark as a joke; but when the officer turned on his red light and the petitioner pulled off the road, he took the sawed-off shotgun from the floor of the car and loaded it. When Patrolman Crabtree was about six feet away, the petitioner stuck the shotgun out the window and fired. Immediately he drove away.

Evidence was presented to the court concerning the petitioner's extensive juvenile record in Missouri. The product of a broken home, he was shuffled back and forth between his mother's house and his father's house, and also spent some time in "group homes" operated by the State of Missouri. A petition was filed in November, 1975, when the petitioner was 14, charging him with four counts of burglary in the second degree and tampering with a motor vehicle. He was adjudicated delinquent and made a ward of the court. In September, 1976, a supplementary petition was filed alleging assault with the intent to do bodily harm; and in that same month another petition charged burglary in the second degree and stealing. In addition, there was a charge of tampering with

mail boxes. According to testimony, the petitioner's conduct steadily worsened until he was returned to his parents' custody. In March, 1977, the petitioner violated his probation by running away from home. He was found in Oklahoma and returned to Missouri.

There was also testimony of statements made by the petitioner both before and after he was taken into custody. As he drove away from the scene of the murder, he said he would rather have killed a cop than go back to where he lived. At one point after he had been taken to jail, he said to two officers, "If I got loose I would shoot you all, too." And at another time after having twice asked to have a light turned off, he told an officer, "Now I have shot one of you people, and I'll get you too if you don't turn this light out."

II

While the petitioner asks to be permitted to withdraw his plea of nolo contendere, all of his assignments of error relate in one way or another to the imposition of the death penalty in his case. He argues first that it would be cruel and unusual punishment to impose the death penalty on a juvenile. Next, he contends that his motion to strike the bill of particulars regarding the sentence should have been sustained, that none of the statutory aggravating circumstances were established beyond a reasonable doubt, and that the aggravating factors in his case were outweighed by the mitigating factors. In his third assignment of error, the petitioner claims that the State suppressed evidence which he could have used to counter one of the aggravating circumstances alleged in the bill of particulars. And, finally, he says he should have been given the services of an investigator and a psychiatrist at State expense. For the sake of convenience, we will discuss the petitioner's arguments out of order.

A

One of the aggravating circumstances found by the District Court was that the murder was committed "for the purpose of avoiding or preventing a lawful arrest or prosecution." Title 21 O.S. Supp.1978, § 701.12. The petitioner claims that the State knew,

but failed to tell, of a witness who could have aided him in att ing this particular circumstance. This witness would have te fied that although the traffic stop was made because of a mi meanor committed by the petitioner in leaving the turnpike ser station, Patrolman Crabtree did not actually see the offense merely heard of it from the undisclosed witness. Thus, the p tioner argues, the officer did not have the right to make warrantless arrest. And this particular aggravating circumst would not have been found had the witness been brought to test

The petitioner had filed appropriate pretrial motic seeking disclosure of any exculpatory evidence held by the St At the pretrial conference the prosecutor insisted that he kne no evidence which would tend to establish the petitioner's i cence or limit the sentence. He agreed that if he did become a of any evidence he would make it known to the petitioner, and court so ordered in a court minute. The petitioner alleges the State knew all along that the patrolman did not see incident at the station. He cites Brady v. Maryland, 373 U.S. 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); United States v. Agurs, U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); and Blevens State, Okl.Cr., 487 P.2d 99 (1971), in arguing that the Dist Attorney acted in bad faith in not only keeping secret his k ledge of the affair, but also in continuing to assert that a la arrest had been made.

The petitioner's assertions are called into question by record. He alleges that he did not find out about the witness u the State had concluded its evidence of aggravation, on May 1978; but on April 10, 1978, he filed a motion to strike the bil particulars regarding the death penalty, and in that motion he that "the evidence shows that Patrolman Crabtree was not maki lawful arrest, the offense for which the defendant was stop being a misdemeanor not committed in the presence of the offic

Also, we do not accept the petitioner's claim that District Attorney was acting in bad faith by continuing to as that a lawful arrest had been made. There are many reasons

making a legitimate traffic stop. The fact that the petitior attack one does not eliminate all others. We will discuss issue in depth when we take up the aggravating circumstances

B

The petitioner was not entitled to State funds to h investigator or a psychiatrist. He insists he was denie process of law, but we have dealt with this question in the See, for instance, Bills v. State, Okl.Cr., 585 P.2d 1366 (and Dennis v. State, Okl.Cr., 561 P.2d 88 (1977).

He claims that under 22 O.S.1971, § 1271, he would hav entitled to investigative and psychiatric assistance ha committed his crime in a county having a population in exc 200,000. Section 1271 provides for the assistance of coun county expense for those who are unable to retain private co but counties having a population in excess of 200,000 are exp excluded from the provisions of this Section. Such counti covered by 19 O.S.1971, §§ 138.1 et seq.; and § 138.6 provid the employment of one or more investigators in the larger cou There is no provision for psychiatric assistance.

In Bills v. State, supra, we held that the stat distinction between the counties with 200,000 people or le the counties with more than 200,000 people is not an unc tutional discrimination. The petitioner has asked us to ov Bills, but we still believe that case is correct. As we said indigent defendants in every county in the state are give assistance of counsel, whether salaried under the public de system or paid individually, at county expense. There rational basis for the division, since the larger counties ur edly have greater numbers of indigent defendants. It is a decision for the Legislature to make as to the point at whi case load justifies a full-time public defender as oppos taking each case separately.

Nor are we offended by the provision for investigat the larger counties. Such a system indicates an economicall division of labor: If a public defender's office could nc

persons to concentrate on investigating cases then more would have to be hired, since without the services of th gator each attorney would have to spend more time on eac

It is true that the District Court was in error that the petitioner was not indigent just because he ha counsel. See Bruner v. State ex rel. Dist. Court, Okl. Cty 581 P.2d 1314 (1978). But even if the court had correctl to be indigent, he would not have been entitled to the he sought.

Finally, we do not see that the petitioner suf injury from the lack of assistance of either an investi psychiatrist. The only specific point on which he urg investigator would have been beneficial is the so-calle sion of evidence by the prosecutor. But as we have appears that the petitioner did know about this issue. without the use of State funds, the petitioner presented mony of three expert witnesses: A psychologist from Eas Hospital, a psychiatrist in private practice, and a so from Oral Roberts University who teaches courses in th criminal law. The petitioner says that the doctors' t were significantly different from that which they gav certification hearing, and he attributes this to a lack o pay for a reevaluation. But we have examined the tran both the certification and the sentencing hearings, and monies are not significantly different.

C

Although the petitioner is now almost 19, he was murder was committed, and he urges that youth should be an absolute mitigating circumstance barring applicatio death penalty. In support of his argument, the petiti Roberts v. Louisiana, 431 U.S. 633, 97 S.Ct. 1993, 52 L (1977). Roberts involved a statute which required t penalty if the murder victim was a peace officer engag performance of his duties. In reversing the death sen United States Supreme Court made the following comment:

"To be sure, the fact that the murder victim w
peace officer performing his regular duties ma
regarded as an aggravating circumstance. Ther
a special interest in affording protection
these public servants who regularly must ri
their lives in order to guard the safety of o
persons and property. But it is incorrect
suppose that no mitigating circumstances c
exist when the victim is a police officer.
Circumstances such as the youth of the offen
the absence of any prior conviction, the influ
of drugs, alcohol or extreme emotional dis
bance, and even the existence of circumstanc
which the offender reasonably believed provid
moral justification for his conduct are a
examples of mitigating facts which might att
the killing of a peace officer and which a
considered relevant in other jurisdictions."
(Footnotes omitted)

The petitioner reads this passage as stating
penalty can never be imposed if the offender is a yout
it differently. It is our understanding, that the Sup
saying it was wrong for Louisiana to mandate the death
out allowing for the consideration of possible miti
stances. The Court did not say that the presence of
factors would bar the application of the death penal
such factors should be taken into consideration in
whether or not to impose the death penalty in a part

Nor do we find merit in the petitioner's argum
10 of the Oklahoma Statutes. Here again, he contends
fact of his having been a juvenile at the time th
committed should bar the use of the death penalty
tioner's argument is not based on any particular sec
10, but on what he believes to be the underlying phi
juvenile code.

The underlying philosophy is rehabilitative.
court is theoretically engaged in determining the
child and of society rather than in adjudicating cri
The objectives are to provide measures of guidance
tation for the child and protection for society." I
States, 383 U.S.541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (19
Application of Gault, 387 U.S. 1, 87 S.Ct. 1428, 18
(1967). There was always a realization that not a
could be helped, and the Oklahoma Legislature provid

beginning that under certain circumstances juv
prosecuted in a regular criminal proceeding. Re
4424; and see Laws 1968, ch. 282, § 112, now 10
1112.[1] Certification of a juvenile to stand trial
legitimate aspect of the juvenile code, and it wa
case. Matter of M.E., supra.

The petitioner insists, however, that cert
change the fact that he was only 16 when he comm
and he argues that it would be both cruel and unu
death penalty on him for that reason. In a conc
Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726,
(1972), Justice Marshall discussed at length
development of the concept of cruel and unusual
suggested that there are four different types of
could be considered cruel and unusual: Those whi
the sense of being previously unknown; those whic
popular sentiment; those which involve extreme p
suffering; and those which are excessive and serv
lative purpose.

Justice Marshall indicates that the origi
the word "unusual" in the phrase "cruel and unusu
the English Bill of Rights of 1689) was inadver
there is nothing in the history of the Eighth
United States Constitution to shed light on its
Justice Marshall notes that capital punishment
unusual in the sense of being previously unknown,
the instant case asserts that it would be unu

---

[1]In recent years there has been a growi
protection of society demands stronger measures
type of statute for proceeding against a juveni
the first instance. Laws 1978, ch. 231, § 2 (
vagueness in State ex rel. Coats v. Johnson, Okl
(1979); and H.B. 1493, effective October 1, 1979

[2]The Oklahoma Constitution uses the phrase
punishment," Art. II, § 9. The petitioner bases
slight difference in wording, but for all inten
take these phrases to be identical.

punishment on a juvenile, since it has never
the petitioner overlooks the fact that when
stand trial as an adult he was certified to be

The petitioner asserts that the yo
executed in Oklahoma was 18 when he committe
cites Ridge v. State, 28 Okl.Cr. 150, 229 P.
this Court declined to impose the death penal
committed murder at the age of 14. But in
this Court said:

> "In this state, under the general pro
> criminal law and procedure construed
> tion with the law relating to juvenil
> the death penalty should not be impos
> boy under the age of 14 years convicte
> unless it clearly appears that the
> offender was a person with a sense o
> bility, intelligence, and understandi
> that of an ordinary person of the age o
>
> "To warrant the death penalty for
> offender convicted of murder, the off
> reprehensible in a superlative degre
> with the fact that the perpetrator wa
> having an ordinary comprehension of
> of the offense and its consequences."

Clearly, as long as 55 years ago it would no
unusual for a 16-year-old person to be giver
And under H.B. 1493, supra, a 16-year-old pe
could be subjected to a regular criminal pro
to be certified. The Legislature must have a
youth could be given the death penalty. We
be unusual, in the sense of the constituti
impose the death penalty on the petitioner.

Nor would the imposition of capital p
any of the ways mentioned by Justice Marshal
pointed out in Gregg v. Georgia, 428 U.S. 1
L.Ed.2d 859 (1976), capital punishment is
sentiment: In the four years between Furma
enacted statutes providing for the death p
And in California the people adopted an ame
constitution authorizing the death penalty.
tively superseded the ruling of the Californi
had ruled that capital punishment violated th

Nor will the manner of execution cause
suffering. The Oklahoma Legislature has pr
tion which will minimize pain--22 O.S.Su
the question of excessiveness can only be
of the particular crime. We shall turn

In light of the above discussion,
it will not constitute cruel and unusual
death penalty on the petitioner.

III

The remaining assignment of erro
is that the trial court erred in imposi
this case. His arguments are directed a
ulars filed by the State and the ruling c
of the assignment calls for a full revie
regarding punishment. For that reason we
sion of this assignment with the statuto
punishment.

The Bill of Particulars filed by
alleged three of the aggravating circu
O.S.Supp.1978, § 701.12:

> *That the murder was "especi
> atrocious, or cruel";
>
> *That the murder was "committed f
> avoiding or preventing a lawful
> cution."
>
> *That the petitioner would "cons
> uing threat to society."

The trial court found that all three circ
beyond a reasonable doubt. On the other
circumstance the court found was the yo
balancing these factors, the judge ind
great weight to the petitioner's youth, b
that the death penalty was proper in thi

The petitioner raises three argu
error. He contends that his motion to s
lars should have been sustained because
support the aggravating circumstance cla

contends that the evidence presen
establish the aggravating circumsta
And, third, he argues that the a
outweighed by mitigating factors, s
not have been imposed. Instead
individually, we shall address t
individually, taking into conside
sented.

A

The petitioner asserts that
was no more heinous, atrocious and
aggravating circumstance in the st
especially heinous, atrocious and c
lature must have intended to reach
ordinary."

In State v. Dixon, 283 So.2
Supreme Court considered the meanin

> "[W]e feel that the meaning
> matter of common knowledge,
> man would not have to guess
> It is our interpretation
> extremely wicked or shockin
> cious means outrageously wi
> that cruel means designed to
> of pain with utter indifferen
> ment of, the suffering of
> intended to be included are
> where the actual commission
> was accompanied by such addit
> the crime apart from the norm
> - the conscienceless or piti
> unnecessarily torturous to th

See also Tedder v. State, 322 So.2d

The State's position -- in t
sentencing hearing and on appeal --
victim and the manner in which the
murder especially abhorrent. A rev
clear that Patrolman Crabtree thoug
traffic stop. In addition to the p
car, Highway Patrol Officer Joe Inm
place. He was going the opposite d
stopped in the median long enough t

to meet him for a cup of coffee.
tion, he concluded that nothing o
Patrolman Crabtree "was showing n
Patrolman Inman drove away when h
of his car and walk toward the pe

Law enforcement officers p
society, and highway patrol offi
traffic tickets. They give aid
render assistance in time of nat
when an officer expects danger:
situation in which he has been pl
Patrolman Crabtree was not prepar
reason to expect it. We believ
officer in the performance of his
Florida Court, "extremely wicke
"outrageously wicked and vile."[3]
the petitioner's manner, we believ
to inflict a high degree of pain
the suffering of others." State v

We, accordingly, uphold th
first aggravating circumstance all

B

With regard to the second a
that the Bill of Particulars was
failed to specify the offense for
stopped. He also argues, as note
not a lawful arrest because Patr
incident at the service station.
petitioner's automobile had no re
O.S.1971, § 12-405(j), and that
been stopping the petitioner for t

---

[3] The statutes of Florida, T
the killing of a law enforcement o
duties is in itself an aggravating

State, it is immaterial whet
event.

We are not persuaded t
entirely on speculation as t
been thinking at the time.
petitioner's argument, for t
have been making an illegal
not see; but as the petitio
several miles: perhaps whil
officer observed some other

The point is that we h
who could testify to the rea
Crabtree, and he is dead. W
petitioner asks us to do, th
Stout v. State, 90 Okl.Cr.
State, Okl.Cr., 276 P.2d 784

It is important to re
vating circumstance is on the
than the officer. It is the
avoiding or preventing a law
701.12, supra. The trial co
its finding:

> "[T]he Court finds wit
> testimony that this De
> back to the authorit
> returned to his father
> be returned to the pe
> charged with his superv
> doubt in the Court's
> reasonable doubt the c
> particular time to avo

We affirm the trial cou
the patrolman stopped the car
behaved as he did. And the
conclusion that he shot Patrol
Missouri.

We also affirm the thi
petitioner had an extensive ju
crimes against persons as wel

earlier

s built
it have
in the
could
he did
ade for
r the

person
rolman
as the
gally.
e v.

aggra-
rather
se "of
lection
making

er why
tioner
rt the
ned to

. The
olving
ition,

while in custody after t
lives of other highway p
finding was justified by

We come now to the
sentencing hearing, the
social worker from Missc
witnesses. The social wo
petitioner's past and his
testified that the peti
Hospital for observation
proceedings. The other
private practice and the
University -- interviewed
proceedings. Their testi
substantially the same as

On the basis of th
tioner and his conversatio
diagnosed the petitioner
ality. At the certifica
states -- California and
sociopathic personalities
whether the treatment had
of their sociopathy. He
-- do seem to grow out of
sentencing hearing that t
type persons rather than
referred to a specific st
subjects were considered
doctor also stated that
reasoning ability or ment

The sociologist f
experience in the field
petitioner as an anti-so
factors in the petitioner

against the
the court's

rs. At the
nesses: A
ee expert
ncerning the
sychologist
ern State
rtification
atrist in
)ral Roberts
rtification
hearing was
on hearing.
o the peti-
sychologist
ial person-
l that two
r treating
be certain
ast grew out
perhaps 30%
said at the
con-artist
. (And he
anti-social
ated.) The
defective

ad extensive
gnosed the
ed about the
development.

He believed that the
work through his prob
a sufficient length c

The diagnosis
psychiatrist in priva
petitioner could be t
years of intensive th
certification hearing
tioner pulled the tri
the petitioner was no
but was killing the s
in Missouri. Neverth
the difference betwee
not think the rules a
did not believe the p
ever arose.

In his closing
brief and argument to
several mitigating ci
only one -- the pet
District Court indicat
but, nevertheless, fo
circumstances of the
ation to the petitione
in this case are very
the petitioner's youth

The petitioner
the murder. He stre
suffering from severe
that the killing was
he was raised. There
ality disorder. But a
difference between ri
trigger, and that is
State. Gonzales v. S

same reason, the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior.

IV

In addition to ruling on the assignments of error that are raised, 21 O.S.Supp.1978, § 701.13, ¶ C, requires this Court to make three determinations. We have examined the record in this case and have given careful consideration to the arguments of counsel, both written in the briefs and presented at oral argument, and we hold:

> 1. That the sentence of death was not imposed "under the influence of passion, prejudice, or any other arbitrary factor." Section 701.13, ¶ C, 1. This was a notorious killing. The record indicates that Patrolman Crabtree was a resident of the county and, no doubt, public feeling was high. But the transcripts are completely devoid of the kinds of remarks that reveal bias, and we are sure that the judge in this case gave the petitioner a fair and impartial hearing.
>
> 2. That the evidence does support the judge's finding of statutory aggravating circumstances as enumerated in Section 701.12. The basis for this holding should be clear from the body of this opinion.
>
> 3. That the sentence of death is not excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. This holding, too, finds ample support in our opinion.

Title 21 O.S.Supp.1978, § 701.13, ¶ E, provides:

> "The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:
> "1. Affirm the sentence of death; or
> "2. Set the sentence aside and remand the case for modification of the sentence to imprisonment for life."

This conviction wherein the death penalty was assessed places this Court in the same position that confronted the Supreme Court of South Carolina in State v. Shaw, 255 S.E.2d 799, 807 (S.C. 1979), wherein that Court stated:

> "We have compared the death sentences imposed upon appellants with the sentences imposed in all prior capital cases tried under the current death penalty statutes and are satisfied that there are no similar cases against which the proportionality of the sentences imposed upon appellants can

be measured.

> "The inability of this Court to compare this case with any other similar cases does not require, however, that appellants' sentences be set aside. Any system of review that requires a comparison of each case with all similar prior cases must have a beginning. There will be a first case for each type or category of capital case that may appear and that first case necessarily cannot be compared to any other similar cases. The first case must stand alone, otherwise comparative sentence review would be forever impossible." (Footnote omitted)

An attempt has been made to compare this case with prior cases that were tried and reviewed under death penalty statutes that are definitionally different from the current statutes. Hence, we find those cases provide no basis for meaningful sentence review.[4]

The current death penalty statutes comply with the guidelines set out in Gregg. We have considered and overruled each assignment of error by the petitioner and have completed the statutorily mandated sentence review. We have searched the record for any fundamental error that might have prejudiced the petitioner and have found none. We find no other reason to disturb or modify petitioner's death sentence.

The judgment of guilt and the sentence of death are AFFIRMED.

AN APPEAL FROM THE DISTRICT COURT, CREEK COUNTY, OKLAHOMA, HONORABLE CHARLES S. WOODSON, JUDGE

MONTY LEE EDDINGS, petitioner, was convicted of the offense of Murder in the First Degree; was sentenced to death, and appeals. AFFIRMED.

---

[4] A list of cases with which an attempt to compare is: Manuel v. State, Okl.Cr., 560 P.2d 1008 (1977); Clark v. State, Okl.Cr., 558 P.2d 674 (1977); Strange v. State, Okl.Cr., 452 P.2d 292 (1969); Fesmire v. State, Okl.Cr., 456 P.2d 573 (1969); French v. State, Okl.Cr., 416 P.2d 171 (1966); Dare v. State, Okl.Cr., 378 P.2d 339 (1963); Doggett v. State, Okl.Cr., 371 P.2d 523 (1962); Young v. State, Okl.Cr., 357 P.2d 562 (1960); Spence v. State, Okl.Cr., 353 P.2d 1114 (1960); Williams v. State, Okl.Cr., 321 P.2d 988 (1958); and Klettke v. State, 92 Okl.Cr. 366, 223 P.2d 787 (1950).

JAY C. BAKER, C. RABON MARTIN
and THOMAS E. SALISBURY,
BAKER, BAKER and MARTIN,
TULSA, OKLAHOMA,
Attorneys for Petitioner,

JAN ERIC CARTWRIGHT
ATTORNEY GENERAL,
MICHAEL JACKSON, ASST.ATTY.GEN
Attorneys for Respondent.

OPINION BY BRETT, J.
CORNISH, P. J., CONCURS
BUSSEY, J., CONCURS SPECIALLY

BUSSEY, J., Concurring:

For the reasons and in accordance with the author
cited by my colleague J. Brett, I am of the opinion tha
judgment and sentence should be affirmed. Appellant's
that the State suppressed evidence critical to the defe
violation of Brady v. Maryland, 373 U.S. 83, 10 L.Ed.2d
83 S.Ct. 1194 (1963), is not supported by the record, f
is clear that counsel for Appellant was not deprived of
such evidence but did in fact make the following stipul
during the mitigation - aggravation hearing:

> "MR. BAKER: Yes, Your Honor. I apologize for th
> We finally contacted Mr. Jim Dickey at work. We
> able to make the following stipulation regarding
> testimony would be were he here to testify today
>
> "And that would be that he observed the Volkswage
> leave the Howard Johnson Filling Station in the m
> that the other witnesses have described, going of
> road; that he then went in and informed Trooper C
> who was drinking coffee in the restaurant, of wha
> seen; whereas Trooper Crabtree responded: I will
> it out." [Tr. 270-271 Hearing of May 15, 1978]

Appellant's further contention that the arrest was
by reason of it having been made for a traffic violatio
committed in the trooper's presence is likewise without
The State's photograph No. 2 of the Volkswagen appearin
Transcript page 5, certification hearing of June 14, 19
State's Exhibit No. 13 admitted by stipulation during t
vation-mitigation hearing of May 15, 1978, Transcript p
33, were both photographs of the Volkswagen driven by A
at the time of the murder. These clearly demonstrate t
Volkswagen did not have rear fenders or mud flaps and w
fore in violation of 47 O.S.1971 § 12-405(j)[1], punishab
the provisions of 47 O.S.1971, § 17-101.

---

[1] "(j) All trucks, trailers and other vehicles op
the highways, except animal-drawn vehicles, not e
with fenders over the rearmost wheels shall have
thereto a rubber or fabric apron directly in rear
rearmost wheels, and hanging perpendicular from t
the vehicle. Said apron shall be of such a size
prevent the bulk of the spray or other substances
the roadway from being thrown on the windshield o
vehicle and thereby obscuring the vision through

Trooper Crabtree followed Appellant's vehicle
hours and had ample opportunity to observe the viola
evidence alone is sufficient to support the legality

---

1 (con)
"of the driver of said vehicle. The provisio
subsection shall not apply to a farm tractor m
the state highway system at a speed less than
miles per hour."

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF

MONTY LEE EDDINGS,)
)
Appellant,)
)
-vs-) No. C-78-325
)
THE STATE OF OKLAHOMA,)
)
Appellee.)

ORDER DENYING PETITION FOR REHEARING, ORDERING ISSUANCE OF THE MANDATE, AND STAYING E

On April 7, 1980, the above appellant, Monty filed his Petition for Rehearing in the above style Certiorari Appeal from his conviction in Creek Cou Court Case No. CRF-77-118. Appellant was convicted of First Degree Murder and the Death Sentence was Court affirmed appellant's conviction on March 21, 29, 1980, petitioner filed his Supplement to P Rehearing, in which he cites the United States Supre sion in Godfrey v. Georgia, 100 S.Ct. 1759 (1980). August 4, 1980, the Attorney General filed his Res Petition for Rehearing.

NOW THEREFORE, after giving full consider Petition for Rehearing filed herein, and being fully premises, this Court finds that the Petition for R be, and the same is therefore, DENIED. The mandate issue FORTHWITH.

IT IS FURTHER ORDERED, that the Execution W shall be stayed for six (6) months, or until the fu this Court, pending any appeal appellant may further

WITNESS OUR SIGNATURES and the Seal of this 15th day of September, 1980.

TOM R. CORNISH,

TOM BRETT, JUDGE

HEZ J. BISSELL, J

ATTEST:

Clerk

80-5727

Supreme
FIL
NOV 1
MICHAEL ROD

IN THE SUPREME COURT OF THE

MONTY LEE EDDINGS,
Petitioner,
vs.
STATE OF OKLAHOMA,
Respondent.

NO.

MOTION TO PROCEED IN FORM

The Petitioner, Monty Lee Ed
asks leave to file the attached Petiti
to the Court of Criminal Appeals of th
pre payment of costs to proceed In Form
to Rule 46. Attached is the Affidavit
presently incarcerated in the Oklahoma
McAlester, Oklahoma. Also enclosed is
attorney for Petitioner.

BAKER AN

BY:

JAY C. B
Attorney
1850 Sou
Tulsa, O
(918) 58

IN THE SUPREME COURT OF

OCTOBER TERM

No. 80-57

MONTY LEE EDD

P

-vs-

STATE OF OKLA

R

ON PETITION FOR A WRIT OF
COURT OF CRIMINAL AP
STATE OF OKL

RESPONDENT'S BRIEF I

JAN E
ATTO

DAVID
ASSIS
CHIEF

112 S
Oklah
(405)

COUNS

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OPINION BELOW . . . . . .

JURISDICTION . . . . . .

CONSTITUTIONAL AND STATUTORY PRO

QUESTIONS PRESENTED FOR REVIEW

STATEMENT OF THE CASE . . . . .

REASONS WHY THE WRIT SHOULD BE D

1. The Eighth Amendment D
matically Immunize fro
Penalty Every Person w
Years Old at the Time
and Under Oklahoma's S
for the Imposition of
alty, A Rational Fact
erly Find that the Dea
Justified Under the Fa
this Individual Crime
Surrounding the Petiti
Present Case. . . . .

2. The Aggravating Circum
Murder was "Especially
or Crule" is not Uncon
and Overbroad and its
Present Case Does Not
less Sentencing in Vio
tates of Godfrey v. Ge

3. The United States Cons
Require a State to Pro
gator and a Psychiatri
Defendant in Capital C
that Oklahoma has Stat
the Hiring of an Inves
Defender Offices in Co
Population is in Exces
Not Violate the Equal
of the Constitution.

CONCLUSION . . . . . .

CERTIFICATE OF SERVICE . . . . .

TABLE OF AU

CASES:

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Coker v. Georgia, 433 U.S. 584 (1

Eddings v. State, 616 P.2d 1159
(Okl. Cr. 1979) . . . . . .

Furman v. Georgia, 408 U.S. 238 (

Godfrey v. Georgia, ____ U.S. ____
L.Ed.2d 398, 100 S.Ct. ____ (19

Gregg v. Georgia, 428 U.S. 15

Ingram v. Wright, 430 U.S. 65

Irvin v. State, 617 P.2d 588
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Matter of M. E., 584 P.2d 134
cert. denied, 436 U.S. 921

North v. Russell, 427 U.S. 32

Proffitt v. Florida, 428 U.S.

Roberts v. Louisiana, 421 U.S

Rummel v. Estelle, ____ U.S.
L.Ed.2d 382, 100 S.Ct. ____

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976, reh. denied, 441 U.S.

State v. Dixon, 283 So.2d 1 (

Vance v. Bradley, 440 U.S. 9

Woodson v. North Carolina, 4

CONSTITUTIONS, STATUTES:

U.S. Const. Amend. VIII . . .

U.S. Const. Amend. XIV . . .

10 O.S. Supp. 1976, § 1112

19 O.S. 1971, § 138.1 . . . .

19 O.S. Supp. 1974, § 138.6

20 O.S. Supp. 1975, § 1304

21 O.S. Supp. 1976, § 701.7

21 O.S. Supp. 1976, § 701.9

21 O.S. Supp. 1976, § 701.10

21 O.S. Supp. 1976, § 701.11

21 O.S. Supp. 1976, § 701.12

21 O.S. Supp. 1976, § 701.13

22 O.S. 1971, §§ 1171-1172

22 O.S. Supp. 1979, § 1271

22 O.S. Supp. 1980, § 1175.1

18 U.S.C. § 3006A . . . . .

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28 U.S.C. § 1257(3) . . .
Fla. Stat. Ann. § 921.141
Ga. Code Ann. § 27-2534.1

Page

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12

IN THE S

ON PETITI
COUR

RESP

The respondent
State of Oklahoma, r
petition for writ of
the Oklahoma Court o
and to which reheari

The opinion of
reported at 616 P.2d

The judgment of
entered on March 21,
on September 15, 198
28 U.S.C. § 1257(3).

CONSTITUTIONA

The Eighth Amen
as follows:

> "Excessive
> excessive
> usual puni

The Fourteenth
provides in part:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 10 O.S. Supp. 1976, § 1112, which was in effect at the time of the petitioner's crime, states in part as follows:

"(b) If a child is charged with delinquency as a result of an offense which would be a felony if committed by an adult, the court shall consider the following guidelines:

"1. The seriousness of the alleged offense to the community;

"2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

"3. Whether the offense was against persons or property, greater weight being given to offenses against persons especially if personal injury resulted;

"4. Whether there is prosecutive merit to the complaint;

"5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults;

"6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living;

"7. The record and previous history of the juvenile, including previous contacts with community agencies, law enforcement agencies, schools, juvenile courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions; and

"8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile if he is found to be guilty of the alleged offense, by the use of procedures and facilities currently available to the juvenile court;

"and after full investigation and a preliminary hearing, may in its discretion continue the juvenile proceeding, or it may certify such child capable of knowing right from wrong, and to be held accountable for his acts, for proper criminal proceedings to any other division of the court which would have trial jurisdiction of such offense if committed by an adult.

"(c) Prior to the entry of an order of adjudication, any child in custody shall have

the same right to be released upon bail as would an adult under the same circumstances.

"(d) A juvenile sixteen (16) years of age or older may be charged and prosecuted in any municipal court for violating a city ordinance if the offense does not constitute a crime under state law, and, further provided, that the maximum penalty which may be imposed shall not be in excess of Twenty Dollars ($20.00), and further provided, that the present laws relative to incarceration of juveniles shall be in no way imparied or altered by this act, nor shall this act alter present laws relative to prosecution of juveniles for traffic violations."

Title 21 O.S. Supp. 1976, § 701.7 provides in part:

"A. A person commits murder in the first degree when he unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof."

. . .

Title 21 O.S. Supp. 1976, § 701.9 stated in part:

"A. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree shall be punished by death or by imprisonment for life."

Title 21 O.S. Supp. 1976, § 701.10 provides as follows:

"Upon conviction or adjudication of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding shall be conducted by the trial judge before the trial jury as soon practicable without presentence investigation. If the trial jury has been waived by the defendant and the state, or if the defendant pleaded guilty or nolo contendere, the sentencing proceeding shall be conducted before the court. In the sentencing proceeding, evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances enumerated in this act. Only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. However, this section shall not be construed to authorize the introduction of any evidence secured in violation of the Constitutions of the United States or of the State of Oklahoma. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death."

Title 21 O.S. Supp. 1976 § 701.11 provides as follows:

"In the sentencing proceeding, the statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in the charge and in writing to the

jury for its deliberation. The jury, if its verdict be a unanimous recommendation of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstance or circumstances which it unanimously found beyond a reasonable doubt. In non-jury cases the judge shall make such designation. Unless at least one of the statutory aggravating circumstances enumerated in this act is so found or if it is found that any such aggravating circumstance is outweighed by the finding of one or more mitigating circumstances, the death penalty shall not be imposed. If the jury cannot, within a reasonable time, agree as to punishment, the judge shall dismiss the jury and impose a sentence of imprisonment for life."

Title 21 O.S. Supp. 1976, § 701.12 provides as follows:

"Aggravating circumstances shall be:

"1. The defendant was previously convicted of a felony involving the use or threat of violence to the person;

"2. The defendant knowingly created a great risk of death to more than one person;

"3. The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;

"4. The murder was especially heinous, atrocious, or cruel;

"5. The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;

"6. The murder was committed by a person while serving a sentence of imprisonment on conviction of a felony; or

"7. The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society."

Title 21 O.S. Supp. 1976, § 701.13 provides as follows:

"A. Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Oklahoma Court of Criminal Appeals. The clerk of the trial court, within ten (10) days after receiving the transcript, shall transmit the entire record and transcript to the Oklahoma Court of Criminal Appeals together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Oklahoma Court of Criminal Appeals.

"B. The Oklahoma Court of Criminal Appeals shall consider the punishment as well as any errors enumerated by way of appeal.

"C. With regard to the sentence, the court shall determine:

"1. Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

"2. Whether the evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in this act; and

"3. Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

"D. Both the defendant and the state shall have the right to submit briefs within the time provided by the court, and to present oral argument to the court.

"E. The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

"1. Affirm the sentence of death; or

"2. Set the sentence aside and remand the case for modification of the sentence to imprisonment for life.

"F. The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration. The court shall render its decision on legal errors enumerated, the factual substantiation of the verdict, and the validity of the sentence."

QUESTIONS PRESENTED FOR REVIEW

1. Does the Eighth Amendment to the United States C tion automatically immunize from punishment by the death every person who is sixteen years old at the time of the regardless of the facts of the case and the character and of the defendant?

2. Is one of the aggravating circumstances which th court found existed in the petitioner's case, that the mu especially heinous, atrocious, or cruel, so vague and ove as to be violative of the defendant's Eighth and Fourteen ment rights, and was the application of that aggravating stance under the facts of the present case improper under Godfrey v. Georgia, guidelines?

3. Does the United States Constitution require a
provide an investigator and a privately retained psychi
indigent defendants in all capital cases, and is the Eq
tection Clause of the Constitution violated if a state
allow public defender offices in metropolitan areas to
investigators while not establishing the statutory mear
providing court-appointed attorneys with investigators
areas?

STATEMENT OF THE CASE

Monty Lee Eddings (hereinafter referred to as peti
was charged by Information in the District Court of Cre
State of Oklahoma, with the crime of Murder in the Firs
in violation of 21 O.S. § 701.7A. Under this Section a
commits murder in the first degree when he unlawfully a
malice aforethought causes the death of another human b

Because the petitioner was sixteen years old at th
crime was committed, under the laws of the State of Okl
certification hearing was required before petitioner co
tried as an adult. Title 10 O.S. Supp. 1976, § 1112 wa
able certification statute in effect at that time. The
was certified to stand trial as an adult and this findi
affirmed by the Oklahoma Court of Criminal Appeals pri
on the merits in Matter of M. E., 584 P.2d 1340 (Okl. C
cert. denied, 436 U.S. 921. Subsequent to that the pe
entered a plea of nolo contendere to the charge of Mur
First Degree, and the court entered a finding of guilt
conducted a sentencing hearing on the question of whet
petitioner should receive the death penalty or life im

The evidence which the State introduced during th
hearing revealed that on April 4, 1977, the petitioner
from Missouri, was driving a vehicle on an interstate
Oklahoma with his sister and two friends. The petitio
his possession a sawed-off shotgun and two other firea
the petitioner had made a stop on the interstate at a
station, he lost control of his car briefly when he dr
cigarette and the vehicle went into a ditch and came b

highway. A man who saw the incident advised the de
way patrol trooper by the name of Larry Crabtree, a
happened. The officer pursued the car to check on

As the occupants of the car in which the petit
driving were moving along, one of the passengers ne
Crabtree was behind them. The petitioner stated, "
cop harasses me I'll shoot him." At that time Troo
turned on his red light and the petitioner pulled
As Trooper Crabtree approached the vehicle in whic
was driving, the petitioner took the sawed-off sho
floor of his car and loaded it. When the Trooper
six feet away, the petitioner stuck the sawed-off
the window and fired the weapon, immediately killi

The testimony also revealed that as the petit
from the scene of the murder he stated that he wou
killed a cop than go back to where he lived. The
duced evidence that the petitioner advised two oth
he had been taken to the jail that, "If I got loos
you all too." At another time the petitioner told
after twice having asked to have a light turned of
shot one of you people, and I'll get you too if yo
this light off."

The petitioner himself produced four witnesse
officer from Missouri who testified extensively co
tioner's background and juvenile record; the Chief
chologist from the Oklahoma state mental hospital
petitioner pursuant to a court order in the preser
fessor from a university who had a Ph.D. in sociol
viewed petitioner while he was in jail; and a psyc
private practice who interviewed petitioner and te
cerning his maturity and emotional development. I
mony of the juvenile officer it was revealed that
been adjudicated as a delinquent for the offenses
stealing, tampering with a motor vehicle, vandali
assault with intent to do great bodily harm.

After the hearing before the court on the a
mitigating circumstances, the court made the spe
that three aggravating circumstances existed. T
vating circumstances which the court found were

1. That the murder was especially h
atrocious, or cruel;

2. That the murder was committed
purpose of avoiding or preventing
ful arrest or prosecution; and

3. That the petitioner would const
continuing threat to society.

The trial court found that all three aggravating
existed beyond a reasonable doubt and found that
outweighed by the only mitigating circumstance w
found existed on behalf of the petitioner, the j
petitioner (Tr. 286-292). The court then senter
to death.

After the petitioner had been convicted and
by the trial court, he appealed his conviction t
Court of Criminal Appeals which affirmed the pet
tion. The Court of Criminal Appeals considered
imposed in this case in accordance with 21 O.S.
and found:

1. That the sentence of death was
posed under the influence of p
prejudice, or any other factor;

2. That the evidence supported the
finding of the aggravating
stances; and

3. That the sentence of death w
excessive or disproportionate
penalty imposed in similar cases.

Regarding the petitioner's contention that
Patrolman Crabtree was no more heinous, atrocio
any other murder," the Court of Criminal Appeal
definition of State v. Dixon, 283 So.2d 1 (Fla.

> "'[W]e feel that the meaning of such
> a matter of common knowledge, so that
> nary man would not have to guess at w
> intended. It is our interpretati
> heinous means extremely wicked or sh
> evil; that atrocious means outra
> wicked and vile; and, that cruel me
> signed to inflict a high degree of p
> utter indifference to, or even enjoyr
> the suffering of others. What is int

> be included are those capital
> the actual commission of the ca
> was accompanied by such additio
> to set the crime apart from the n
> tal felonies--the conscienceless
> less crime which is unnecessari
> to the victim.'" 616 P.2d at

The Court noted that the identity of t
in which the killing was performed made the
The court stated that the Trooper thought h
traffic stop and had no reason to expect an
The court found "we believe that this killi
in the performance of his duties was, in th
court 'extremely wicked' and 'shockingly ev
wicked and vile.'"

The Court concluded its discussion of
stance by stating:

> ". . . and from the testimony r
> petitioner's manner we believe
> killing was 'designed to inflic
> gree of pain with utter indiffere
> the suffering of others.' Sta
> supra." 616 P.2d at 1168.

The Court then affirmed the judgment of gui
of death.

REASONS WHY THE WRIT SHOULD B

I. THE EIGHTH AMENDMENT DOES NOT AUT
IMMUNITE FROM THE DEATH PENALTY B
WHO IS SIXTEEN YEARS OLD AT THE T
MURDER, AND UNDER OKLAHOMA'S STAT
CEDURE FOR THE IMPOSITION OF THE
ALTY, A RATIONAL FACT FINDER COUL
FIND THAT THE DEATH PENALTY WAS J
UNDER THE FACTS SURROUNDING THIS
CRIME AND THE FACTS SURROUNDING T
IN THE PRESENT CASE.

The petitioner argues, in effect, that
should adopt a constitutional principle tha
age of eighteen should be automatically imm
penalty, irrespective of the crime he commi
circumstances surrounding his individual ch

The State responds first by noting tha
allows the consideration of "any" mitigatin
Lockett v. Ohio, 438 U.S. 586; Roberts v. I
Woodson v. North Carolina, 428 U.S. 280. T

present case itself found petitioner's a
cumstance but that it was outweighed by
circumstances found by the trial court b
(Tr. 286-292).

Age itself is not regarded as a "su
United States Constitution. Massachuset
Murgia, 427 U.S. 307; Vance v. Bradley,
the Supreme Court has been reluctant to
upon a state's criminal justice system.
514, 522-525.

In Ingram v. Wright, 430 U.S. 657,
the Cruel and Unusual Punishment Clause
which can be inflicted by the state in t

> "First, it limits the punishme
> imposed on those convicted o
> second, it proscribes punishme
> proportionate to the severity
> . . and third, it imposes sub
> on what can be made criminal
> such." 430 U.S. at 667.

Nowhere in those standards is there a pr
ment of non-suspect classes of persons.
U.S. 238, 240 (J. Douglas concurring).
Wainwright, 578 F.2d 582, 616 (5th Cir.
U.S. 976, reh. den., 441 U.S. 937. Nor
that the imposition of the death sentenc
grossly disproportionate to the severity
comparing the facts in the present case
Florida, 428 U.S. 242 and Gregg v. Georg
Estelle, ____ U.S. ____, 63 L.Ed.2d 382,
Coker v. Georgia, 433 U.S. 584. Further
stated in Gregg:

> ". . . we are concerned here
> imposition of capital punis
> crime of murder, and when a
> taken deliberately by the offe
> say that the punishment is in
> portionate to the crime." 4

The State contends that the better
defendant, as the State allowed petition
case, to present his or her age as a mit
Lockett v. Ohio, supra, this Court found

because it failed to allow the sen

the following as mitigating factor

> ". . . her character, pr
> of specific intent to
> relatively minor part
> U.S. at 597. (Emphasis

The sentencing judge in the p

tioner to introduce such mitigatin

did not outweigh the aggravating c

existed beyond a reasonable doubt.

that the imposition of the death p

in accord with statutory procedure

supra, and Gregg v. Georgia, supra

scheme for the imposition of the d

authority is required to "focus on

of the crime and in the defendant.

is an appellate review of each dea

Georgia, Gregg, 428 U.S. at 240-20

U.S. at 253. Therefore, certiorar

this contention of the petitioner.

II. THE AGGRAVATING CIRCUMST
WAS "ESPECIALLY HEINOUS,
IS NOT UNCONSTITUTIONALL
BROAD AND ITS APPLICATIO
DOES NOT CONSTITUTE STAN
IN VIOLATION OF THE DICT
GEORGIA.

One of the aggravating circum

trial court was that the murder wa

or cruel." 21 O.S. Supp. 1976, §

language contained in the Florida

Stat. Ann. § 921.141(5)(h). In Pr

Supreme Court upheld the death con

found that the murder there was "e

cruel." 428 U.S. at 920. The Sup

Supreme Court had adopted the cons

forth in State v. Dixon, 283 So.2d

that:

> "We cannot say that the
> strued, provides inadequ
> charged with the duty o
> posing sentences in capi
> at 255, 256.

In the present case the tria
of Criminal Appeals adopted the D
287), 616 P.2d at 1167, 1168. Th
Appeals has also affirmed other d
Dixon case was used as a basis fo
defining "heinous, atrocious or c
P.2d 269, 280 (Okl. Cr. 1980); In
598-599 (Okl. Cr. 1980).

The facts in the present cas
at least as callous as the one in
The petitioner in Proffitt stabbe
chest during a nighttime resident
the present case calculatedly mur
who thought he was making a routi
in Proffitt, the Supreme Court re
313 So.2d 666 (Fla. 1975) where t
traveling companion. 428 U.S. at
case reveals that one of the aggr
the jury was that the murder was
or cruel." 313 So.2d at 671. Se
supra, 578 F.2d at 610-612.

The petitioner cites the cas
U.S. ____, 64 L.Ed.2d 398, 100 S.
sent case is analogous in law and
circumstance which the Supreme Co
construed and applied to that fac
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rible or inhuman in that it invol
or an aggravated battery to the v
2534.1(b)(7). Godfrey v. Georgia
the statute is different on its f
statute requiring that the murder
or cruel."

The Supreme Court in Godfrey
reme Court did not apply a const
"outrageously or wantonly vile,

involved . . . depravity of
Court noted that the facts
were members of the defenda
emotional trauma. The victi
shortly after the killings,
sibility and the "heinous"
409. The Supreme Court sta
is no principled way to dis
penalty was imposed, from t
64 L.Ed.2d at 409.

In the present case, w
taneously, several major fa
one in Godfrey. First, as
aggravating circumstance is
the Godfrey killings "heino
statute refers to crimes th
or cruel."

Secondly, the victims
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case the victim was a highw
what he thought to be a rou
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> ". . . Patrolman
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> 616 P.2d at 1168.

In Roberts v. Louisian

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> property." 431 U.

Thirdly, in Godfrey, t
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Therefore, in view
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III. THE UNITED STA
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Nowhere in the statutes
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616 P.2d at 1164. T
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These statutes have
Supp. 1980, § 1175.1
ordered mental exami

In its Opinion
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616 P.2d at 1164. R
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While Congress
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enact a similar statute. Furthermore, the statutory system establishing public defenders in certain populous counties, with the right of those offices to hire investigators for the efficient management of the office, should not offend the Equal Protection Clause of the Fourteenth Amendment. North v. Russell, 427 U.S. 328.

Regarding the petitioner's claim that the State should have provided funds for the hiring of a private psychiatrist, mention should again be made of the fact that petitioner produced three expert witnesses who testified concerning the petitioner's background and mental state. One of those was a state psychiatrist who testified concerning the petitioner's mental state when he was committed for observation. This contention is, therefore, without merit and certiorari should not be granted to review this contention.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

JAN ERIC CARTWRIGHT
ATTORNEY GENERAL OF OKLAHOMA

David W. Lee

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

On this 13th day of February, 1981, 3 (three) true and correct copies of the foregoing Brief in Opposition were served as prescribed by the Rules of this Court, by placing same in the U.S. Mail, postage fully prepaid, to:

Jay C. Baker
1850 South Boulder
Tulsa, Oklahoma 74119

David W. Lee

DAVID W. LEE

Office-Supr
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C

No. 80-5727

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MONTY LEE EDDINGS, *Petitioner,*

v.

STATE OF OKLAHOMA, *Respondent.*

On Writ Of Certiorari To The Oklahoma Court Of Criminal Appeals

---

BRIEF FOR PETITIONER

JAY C. BAKER
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Tulsa, Oklahoma 7411
(918) 587-1168
Court-appointed Counsel for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

QUESTIONS PRESENTED

1. Whether the infliction of the death penalty on a who was sixteen at the time of the crime constitutes cru unusual punishment under the Eighth and Four Amendments of the Constitution of the United States

2. Whether the Court should address the plain erro mitted by the trial court when it refused to consider re mitigating evidence in violation of *Lockett* v. *Ohio*, 43 586 (1978)?

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IN THE

Supreme Court of the Unit

OCTOBER TERM, 1980

No. 80-5727

MONTY LEE EDDINGS, *Petitioner*

v.

STATE OF OKLAHOMA, *Respondent*

On Writ Of Certiorari To The Oklahoma Court Of Criminal Appe

BRIEF FOR PETITIONE

OPINIONS BELOW

The opinion of the Oklahoma Court of Crim firming petitioner's conviction of first degree m tence of death by lethal injection is reporte *State*, 616 P.2d 1159 (Okla. Cr. App. 1980) (A judgment of the District Court of Creek Coun and appears at A. 4-5.

The opinion of the Oklahoma Court of Crim firming the order waiving juvenile jurisdictio petitioner to stand trial as an adult is report *M.E.*, 584 P.2d 1340 (Okla. Cr. App.), *cert.* 921 (1978). The order of the Juvenile Divisio Court of Creek County is unreported.

JURISDICTION

The jurisdiction of this Court rests u § 1257(3), the petitioner having asserted belo here a deprivation of rights secured by the Co United States.

The judgment of the Oklahoma Court of C was entered on March 21, 1980. A timely peti

ing was denied by that court on Sept
tion for certiorari was filed on Nov

**CONSTITUTIONAL AN
PROVISIONS INV**

This case involves the Eighth Am
tion of the United States, which pr

> "Excessive bail shall not be re
> imposed, nor cruel and unusu

and the Fourteenth Amendment t
United States, which provides, in p

> "[N]or shall any State deprive
> or property without due proce

This case also involves the fol
statutes of the State of Oklahoma,
pendix A to this brief: Okla. Stat.
701.11, 701.12, and 701.13.

STATEMENT OF T

April 4, 197

Early on the morning of April 4
sixteen-year-old boy who had bee
father and his stepmother in Camd
went to the home of a friend, fou
(A. 50). Eddings revealed to Molt
come angry with him the night befo
items from a family van (A. 57); h
he planned to run away from home

[1] Eddings had attempted unsuccessfu
month. His probation officer, Steven D
1977, he had been contacted by the Ca
him that Eddings was being detained
Oklahoma. Eddings' parents had not re
authorities (A. 114).

cussion, Molt agreed to join Eddings
turned to Eddings' house.

Before they left, Eddings took a .4
basement where, according to Molt, h
the barrel (A. 50). He then placed tha
another .410 gauge shotgun and a
Volkswagen (A. 48).[2] The two le
Volkswagen for Joplin, Missouri, whe
up Eddings' fourteen-year-old sister
another younger sister, Brenda (Cert.
with petitioner's natural mother. Mol
Eddings acted "[j]ust normal, you kn
(A. 60), in fact he knew Eddings to b
because of problems with his father (

Rhonda Eddings had spoken with h
weekend at their grandmother's hom
cussed running away sometime du
(Cert. H., II, 083, 085). Rhonda appa
teen-year-old classmate, Terrie Cleve
run away because she had become
Clevenger agreed to accompany Rho

Eddings and Molt met the two y
ninth grade classroom in Joplin.
proved unable to leave work to accom
044), the four young people set out

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[2] Molt testified that Eddings "said som
out of money or something, you know,
(A. 60).

[3] Each reference to the transcript of th
in the Juvenile Division of the District Co
indicated by the abbreviation "Cert. H.,"
ber indicating the volume of the transcr
dicating the pages referred to. The recor
before the Oklahoma Court of Criminal
was not brought back before that court

Interstate 44. None of the
and none had a specific
"[T]hey said something a
ico and California" (A. 9

Rhonda recalled that he
drive and seemed "kind
H., II, 086-087). After the
a turnpike gate to pick
(A. 32). Thomas testified
headed for Florida; when
the wrong direction, one
read a map and give them

Shortly after they picked
Howard Johnson restaura
drinks (A. 52). As he
Eddings dropped a cigaret
to retrieve it, the Volksv
road and down a shallow e
Apparently, a service stati
vehicle veer off the entry
Oklahoma Highway Patrol
side the restaurant havin
would investigate (A. 185

Some twenty minutes a
taurant and reentered the
saw a highway patrol car
remarked, "Here comes
came extremely angry (A
"[i]f this mother fucking
blow him away" (A. 66).
saying "he was tired of b
and stating that[4]

---

[4] Although Gary Molt test
friend express animosity aga
experienced "quite a bit of t
(A. 62).

"he was going to kill hi
well, you ain't going to
kind of thought it wa
know, I didn't say anyt
didn't believe I was th
Monty asked for a shot
board of the seat, and
one shell, and kind of p
gle, and just kind of fi

(A. 34).

According to Gary M
Volkswagen to a stop on th
to the officer's signal, Molt
been resting between the
placed it behind the driver
back behind the seat, how
loaded it with a single shel
proached from behind on th
(A. 54).

Hitchhiker Thomas recal
"Monty was kind of shakin
asked him if he had kille
know" (A. 34).

"Q. Was he silent all
A. [Thomas]: He w
as I; we were all
Q. What was he say
A. He was just mu
understand."[6]

(A. 38).

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[5] The other shotgun and the
behind the rear seat (A. 64).

[6] Terrie Clevenger saw the
blood came out, and he fell to
Chief Medical Examiner of th
ficer Crabtree had suffered a

After firing the
recalled Eddings s
have shot an Offi
Soon after they res
Thomas to throw a
(A. 54-55).

John Marquiess
vehicle pulled awa
ficer Crabtree lyin
alert on his citizen
was apprehended
thereafter (A. 47
Eddings observed
to the side of the r
and laid down on

Eddings was a
Sheriff's Departm
held in custody (A
Patrolman Joe In
standing in "a hal
partment" (A. 76
and a half to two
looked over his sh
Leon Spencer wh
Mr. Eddings at thi
that he would sho

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which inflicted "da
fourth and fifth ribs
ventricles of the he
guination, or bleedi
would have been w

[7] Officer Inman te
had simply spent th
his own choice" (A

[8] Trooper Spence
Another Highway
the evening, after I

On Tuesday, A
Monty Eddings ap
District Court of
parents had come
I, 002-003). The
attorney was seek
adult, set a hearin
retain counsel (Ce

Three days later
Court, appeared o

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a light being left on i
shot one of you peop
out" (A. 103).

[9] Baker raised at th
ings. He informed th
the first time this mo
what I've read in th
There have [sic] bee
cursive [sic] researc
whatever relevant fa
stated that although
his cell this morning
wasn't able to condu
II, 006). (Baker was
have tried to speak v
of a highway patroln
Saturday we had a p
ent throughout the e
to the jail, I am no
clearance from the I

Baker urged that "
H., II, 010), includi
005). The court nev
II, 011-012). It did r
pare, and did offer
012).

presente
022-028)
H., II, 1
the passe
H., II, 0
Eddings
H., II,
Eddings'
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[10] Und
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above, w

[12] The S
(medical
pert); (iii)
thy Wayn
44-48) (p
friend); (
Leon Sp
Clevenge
(A. 99-10

aggravating circumstances: (i) that the murder was especially heinous, atrocious or cruel;[13] (ii) that the murder was committed for the purpose of avoiding or preventing a lawful arrest;[14] and (iii) that there existed a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.[15]

In mitigation, Eddings produced the testimony of four expert witnesses. Stephen Dorn, petitioner's Missouri probation officer,[16] testified that he had first met Monty Eddings when Eddings was fourteen and was referred to the juvenile authorities for four break-ins and for tampering with a motor vehicle (A. 105-107). In investigating Eddings' past, Officer Dorn learned that, when Eddings was five years old, his natural parents were divorced (A. 106). From the time he was five until he was fourteen, Eddings remained with his mother, Mary Kinney, in Jasper County, Missouri (A. 109). During this period, Ms. Kinney used alcohol excessively (A. 110), and, according to Jasper County authorities, may have been involved in prostitution (A. 110-111). The report which Probation Officer Dorn "received from the Jasper County Juvenile Court was . . . that . . . Monty could pretty much — in their own language — do his own thing. He could come and go when he wanted to . . . starting at the age of five." (A. 109). Observing that a childhood without rules or discipline often "leads [to] a chaotic adolescence." Officer Dorn testified that when Monty Eddings turned fourteen, Ms. Kinney sent him to his natural father, Ronald Eddings, "because she couldn't control the child" (*id.*).

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[13] OKLA. STAT. tit. 21, § 701.12(4).

[14] OKLA. STAT. tit. 21, § 701.12(5).

[15] OKLA. STAT. tit. 21, § 701.12(7).

[16] Dorn's title was Juvenile Officer, 26th District Circuit State of Missouri (A. 104). Under Missouri law, Officer Dorn served both as an investigator and as a probation official on juvenile cases (A. 104-105).

Ronald Eddings proved a marked contrast to Ms. Kinney in his child-rearing methods. Officer Dorn described him as "quite an authoritarian," noting that "Monty was always fearful of his father, because his father tended to overreact; or rather than discuss things with him, would take it out in more physical means . . . [b]eatings, slapped, that sort" (A. 113). According to Officer Dorn, Eddings' step-mother was unable to "cope with the problems of a fourteen . . . year old male child with serious emotional behavior" (A. 116) — indeed, her reports to juvenile authorities on Monty Eddings "indicated some sort of schism of thought" (*id;* see A. 126). In Officer Dorn's view,

> "Monty was very scared, I think, of his home situation with his father. He was very hostile. Monty didn't have anyone he could turn to and discuss his problems; and I think Monty was holding a lot of these things within him, and what happened was just a combination of Monty holding everything in and just releasing it all at one time. Toward the end, he became very hostile and bitter."

(A. 113).

Officer Dorn testified that Monty Eddings was adjudicated a delinquent on November 28, 1975, on four counts of burglary in the second degree and stealing, and one count of tampering with a motor vehicle. He was placed on probation and left in the custody of his father (A. 107).[17] During the following summer, Eddings returned to live with his natural mother in Jasper County and became involved in mail box vandalism and an assault.[18] These incidents resulted in a supplemental petition and further adjudication of delinquency (A. 108), following which Eddings was placed in a group home in the fall of

[17] The Juvenile Court diagnosed Monty Eddings as someone who "lied . . . was deceitful and manipulative." "[H]e couldn't trust people" (A. 120).

[18] Officer Dorn explained that the assault charge arose from a "street fight" involving Eddings and other boys at a local drive-in theatre (A. 118).

1976. He initially did well at the home (Cert. H. 35-39) bu
er was accused of several petty thefts (A. 108). He was
adjudicated a delinquent, and again placed on probation
his father and step-mother. This was four months befo
ran away (*id.*).

Officer Dorn summarized that Monty Eddings' actions
ved from "a mother who didn't have time for him in J
County . . . a stormy history of divorce; a . . . step-moth
in Camdenton who he finally goes to live with who has nc
how to raise a child, and who, herself, had problems with
dren; a father who just didn't have time for anything
doing his job" (A. 127).

Eddings' second witness in mitigation was Dr. H.
Dietsche, Chief Forensic Psychologist at the Eastern
Hospital in Vinita, Oklahoma (A. 131). Dr. Dietsche tes
that he had administered a number of psychological tes
Eddings. On the Wechsler Adult Intelligence Scale, Ed
"obtained an I.Q. score of 88, which would place him i
dull . . . average intellectual category . . . Making an ext
lation, I got a mental age of approximately . . . fourteen
three months [to] fourteen years six months" (A. 133-1
He concluded from Eddings' high scores on the sociopat
psychopathic scale of the Addiction Research Center Inv
ry and the psychopathic deviancy scale of the Minnesota
tiphasic Personality Inventory that Eddings had develo
"sociopathic personality" (A. 136). Dr. Dietsche indi
that "[t]he most recent studies . . . now think [socio
start[s] very early in life, and comes to a head more o
around fifteen years of age" (A. 138), in part because a

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[19] Dr. Dietsche explained that "the mental age concept
down pretty well, between fourteen to sixteen years of ag
134), and that, although the Stanford-Binet test computes
age from test scores, the Wechsler Scale given to Eddings do
Dr. Dietsche's estimate of fourteen years and six months was
fore only an extrapolation from test data, not a direct test res
135-136).

cents have "to try to find a vocation; they have to be [abl
. . . break[] away from the home ties; they have the in
boiling of their own sexual impulses that are now comir
the fore, . . . they have certain demands by others, socie
that they have to learn and adjust to; they still are insecu
to what their ultimate life goals are to be; so they have qu
lot thrown at them . . . " (A. 138-139). Dr. Dietsche test
that perhaps 30 percent of all sociopaths grow out of thei
havior by their middle thirties, even without treatr
(A. 139).

Eddings' third mitigating witness was Dr. Richard R
an Associate Professor of Psychology at Oral Roberts Un
sity in Tulsa, Oklahoma (A. 145), and a consultant to
Oklahoma Department of Institutional and Social Rehab
tive Services (A. 147). Dr. Rettig had interviewed Edc
and reviewed both his psychiatric and psychological recor
well as the record of the certification hearing (A. 146-
Dr. Rettig diagnosed Eddings as "antisocial," meaning
"in his personality development there has been a great de
blockage. He's been unable to develop any mature bas
make judgments [and] often acts out at a level to a five o
or twelve year old child" (A. 149). "I would say, in my
judgment, that his responses appeared to me to be se
years below his chronological age" (*id.*).

Dr. Rettig also expressed the opinion that Eddings' c
tion was "[a]bsolutely treatable" (*id.*), and went on t
scribe various treatment techniques (A. 150). Asked to d
nate the cause of Eddings' personality difficulties, Dr. R
suggested that they "com[e] from that total ambivalen
his childhood, the lack of connectiveness, the lack of be
ingness, the being torn from whatever roots he had in t
of his mother, and a certain significant degree of hostilit
feelings of alienation, developed in my opinion from
childhood experience of no roots" (A. 152).

Eddings' final witness in mitigation was Dr. Anthor
Gagliano, a licensed psychiatrist in private practice in T
Oklahoma (A. 165). Dr. Gagliano interviewed Eddings i

Sapula County Jail.[20] He indicated that Eddi
upset about [his parent's] divorce" when he w
he had always maintained the fantasy that they
ry" (A. 168). His natural mother instead re
liceman from Joplin, Missouri, when Eddings
Eddings responded with "anger, hatred, rebel
loss" (*id.*). Dr. Gagliano told of one incident

> " . . . wanted to impress his mother or
> know why he did it, but he washed down
> he thought it would be nice if the walls w
> his [step-]father walked in, and I think re
> and hit him quite severely with his shoe
> walls."

(A. 170).[21] Dr. Gagliano stated that the incide
"Anger. Hatred" (*id.*).

Dr. Gagliano diagnosed Eddings as suffering
social or a dissocial disorder," characterized b
emotional development at age seven" (A.
inability to display his emotions (A. 169). He st
time Officer Crabtree was shot, Eddings "ac
year old seeking revenge . . . [against] the origi
anger . . . the Policeman who married his mo
stole his mother away" (A. 172). Eddings' dis
treated, Dr. Gagliano thought, though the tr
take "many years — fifteen or twenty years o
therapy" (A. 171).

After the defense had rested and both sides
ing arguments, the court entered oral findings
clusions of law. The court found that Eddings'

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[20] Dr. Gagliano taped the entire interview with E
was introduced into evidence as Respondent's Exh
certification hearing.

[21] Eddings' step-father was killed in a motorcy
months after the marriage (A. 170).

heinous, atrocious and cruel;[22] that the crime h
mitted for the purpose of avoiding or prev
arrest;[23] and, in light of the two utterances of E
Oklahoma Highway Patrol Officers following h
court also found "beyond a reasonable doubt . .
a very strong likelihood that if the Defendant
that he would again commit a criminal act of
would constitute a continuing threat to society"

Addressing the issue of mitigation, the court

> "I think there is some authority in the Sta
> of the Defendant can be considered . . .

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[22] "In this regard, the Court particularly finds tha
heinous crime is concerned, that the definition
searched indicates to the Court that this was
wicked or shockingly evil crime. And this supp
finding insofar as that aspect is concerned. Insof
the Court finds beyond a reasonable doubt that th
atrocious crime. And I specifically find the de
term to be outrageously wicked and vile. Insofa
definition of cruel that I have found indicates tha
signed to inflict a high degree of pain, utter inc
enjoyment of the suffering of others. I find one p
ticular definition to be complied with beyon
doubt, and that is that it was designed to inflict a
pain, and was in utter indifference to the right
Crabtree."

(A. 187).

[23] "In this particular case, the Court finds witho
from the testimony that this Defendant did not
to the authorities in Missouri, or be returned
mother. Or at least to be returned to the person
time charged with his supervision. And there is
the Court's mind but that beyond a reasonable
was committed at that particular time to avoid

"Insofar as a lawful arrest is concerned, of co
feels that there was sufficient evidence to show t
the lights being on the patrol car, and the actual
vehicle, that Trooper Crabtree's intent was to
arrest."

(A. 187-188).

given very serious consideration
fendant when this particular cr
On the other hand, the Cou
entirely by the youthfulness of t
sixteen years old when this hei
ted. Nor can the Court in follow
ion, consider the fact of this yo
ground.

* * *

So not finding any mitigation
ness, and failing to find that it
the aggravating circumstances t
beyond a reasonable doubt, the
in this particular case other thar
Eddings to death. And this will b
ing of this Court."[24]

(A. 188-189).

SUMMARY OF ARG

I

The imposition of a death sentenc
ted by a child below the age of eight
unusual punishment forbidden by th
Amendments. Every objective indica
cietal values points toward repudiatio
a punishment for young offenders. T
fact, witnessed the gradual evolutio
juvenile judicial and correction sys
ciety's growing understanding of the
before the law, and their unique po

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[24] Unlike the capital statutes of many s
§ 701.10 does not specifically enumerat
but instead provides merely that "[i]n
evidence may be presented as to any mi
to any of the aggravating circumstances
Appendix A, *infra*.

The insistence on separate treatment
has coincided with a marked decrease
juveniles executed in this country, es

These evolving societal values are
judgments on capital punishment. In
offenders under eighteen are expressl
statutes; in most other States, the you
enumerated mitigating circumstance.
tional statutes overwhelmingly point
most appropriate legal boundary bet
hood. The ratification of the Twenty-
to the consensus recognizing the spe
eighteen. An overwhelming agreeme
community that children under eigh
execution sheds further light on soci
teme reluctance of contemporary jurie
tences on offenders under eighteen c
use of the death penalty against perso
an atavistic and discredited practice.
learned during the past century abou
the young, their still-incomplete mo
tellectual development during adol
imposition upon them of the most
penal sanction wielded by society wou
of that "human dignity" protected
ment.

II

Petitioner also contends that the t
tors in his case requires that his death
unconstitutionally excessive and dis
tive of the Court's decision on youth
sive mitigating circumstance. Petitio
controverted proof that his mental an
less even than his very young chron
emotionally disturbed youth whose v
cific roots in the tragic neglect and

surrounded his childhood. I
past, petitioner had no seri
and psychologists and psych
incorrigible nor beyond reha

Finally, petitioner asks th
tence because of plain consti
record. Although this point w
decided below, the sentencir
sider relevant mitigating ci
disputable violation of the E
subsequently announced in
(1978).

ARG

**THE EXECUTION OF
THE AGE OF EIGHT
COMMITTED WOULI
ARDS OF DECENCY
PRECEDENT, IN LEC
BEHAVIOR OF CAPI
PORARY VIEWS AN
DREN**

A. Introduction

In *Gregg* v. *Georgia*, 428
Justices Stewart, Powell an
"the death penalty is not a f
er be imposed, regardless of
regardless of the character
the procedure followed in re
The Court nevertheless
punishment is unique in its
"different in kind from any
our system of criminal justi
become a constitutional cor

ness of the death penalty co
ment concern. *Gardner* v.
Lockett v. *Ohio*, 438 U.S. 5
U.S. 625 (1980). In particula
an unconstitutionally excess
Coker v. *Georgia*, 433 U.S.
Georgia, 433 U.S. 917 (197
concluded that capital punis
alty for the crime of murde
fendant possessed a purpose
Lockett v. *Ohio*, 438 U.S. 58
curring in part and dissentin

The issue presented by
Amendment permits the s
death to be imposed upon a j
liberate murder. The Cour
offender's youth as among t
gate against imposing capital
supra, 428 U.S. at 197. See
242, 251 (1976) (sentencin
the defendant's youth argue
tence than might otherwise b
U.S. 262, 273 (1976) (Texas
the age of the defendant' " i
lowing Term, in *(Harry) Ro*
637 (1977) (per curiam), t
which imposed capital punis
convicted of murdering a po
consideration of "[c]ircums
offender." See also *Lockett*
(1978) (mentioning age as
v. *Ohio*, 438 U.S. 637, 640-

The Court has long "[a]s
constitutionally may be tr
Bellotti v. *Baird*, 443 U.S. 62
has cautioned against the ass
should always stand in parity
a very special place in life w
theories and their phrasing

lacious reasoning if
of a State's duty tov
528, 536 (1953) (Fr
the Court has often
this distinction, exp
childhood and adol
perspective, and jud
could be detriment
U.S. at 635. See, *e.g*
("Age 15 is a tende
cannot be judged by
. . . This is the peri
adolescence produc

The question no
methodology of *Gre*
age, which this Cou
nificant — and, in
mitigating factor —
least, youth alone p
severe and unique
Fourteenth Amend
offenders under the
sion of their crimes
alone upon "basic
the [Eighth] Amen
upon objective indi
ards of decency,"
juvenile execution
and precedent, legi
reflected in their s
592, all combine
repudiation of dea
To that evidence,

B. An Historic

1. The commo

At common law
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"though an infant
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older, however, w
nal acts. Conseque
turies in England,
— and actually
executed."[26] Sir L
known instances i
death, including a
Summer Assizes f
nine-year-old boy
printers' colors wo
suggested that the
actual execution o
phenomenon,[29] w

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[25] 4 W. BLACKST
ENGLAND 23-24 (1
28 (1682).

[26] 1 L. RADZINOV
LAW AND ITS AD
MENT FOR REF
RADZINOWICZ, E

[27] *Id.*, at 12, *citing* F

[28] *Id.*, at 14 n.39 *citi*

[29] Knell, *Capital*
Juvenile Offenders in t
tion in the Eighteenth,
cited as Knell, *Ca*
SAVERS: THE INVI
1977) [hereinafter ci
reports that he had
being sentenced to d
in London. "Of thes
Punishment, at 199.

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"[i]n 178
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The ava
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children[31]
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[30] RADZ
PARL. HIS

[31] "The r
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were merel
Hale, Hawk
(1796) con
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porated int
199.

[32] Platt c
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(1828) (tw
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tant to ser
case arose,
by the trial
SAVERS,
People v.

2. Th

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1823), in
the execut
nal Court
judgment
States, ha
careful sea
found." *I*

[33] See ge
SCHNEID
YORK ST

[34] Act of
Fox, *Juve*
REV. 118
Perspective

[35] Fox, *I*

> ruption, to deprive them of their remaining sensibility to the shame of exposure, and establish them in all hardihood of daring and desperate villainy? Is it possible that a Christian community, can lend its sanction to such a process without any effort to rescue and save?"[36]

New York's responsive experiment with separate juvenile correctional facilities was quickly adopted in a number of other States.[37] A related development came with the opening of the Chicago Reform School, which rejected New York's large dormitory or "congregate" system in favor of a program structured along familial lines. As its superintendent stated in his first annual report:

> "Our government of the school has been parental. We have labored to introduce as much of the family as possibly [sic] into our management of the school. We have made it our chief aim to fill a father's place to these unfortunate youth . . . The law of kindness has been our role in regulating its discipline."[38]

The philosophy that juvenile institutions should strive to treat children as might surrogate parents saw a judicial parallel

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[36] *Id.* citing Society for the Prevention of Pauperism in the City of New York, Report on the Subject of Erecting A House of Refuge for Vagrant and Depraved Young People (1823).

[37] See, *e.g.*, Act of Mar. 23, 1826, ch. 47, [1826] Pa. Laws 133 (Pennsylvania); Act of Mar. 4, 1826, ch. 182, § 3, [1826] Mass. Laws 327 (Massachusetts).

[38] Fox, *Historical Perspectives*, at 1208, quoting First Annual Report of the Officers of the Chicago Reform School to the Board of Guardians 14-15 (1856). The school's efforts were somewhat short-lived: Fox recounts that judges developed a practice of sentencing only the most incorrigible youth to the school; that an Illinois Supreme Court decision in *People ex rel. O'Connell* v. *Turner*, 55 Ill. 280, 8 Am. Rep. 645 (1870) seriously undercut the limits of the *parens patriae* notion during the next several years; and that the Chicago Fire in 1871 forced the closing of the school. Fox, *Historical Perspectives*, 1215-1221.

in refinement of the theory that the state should stand as *parens patriae* on behalf of wayward children. The most celebrated nineteenth century articulation of this emerging judicial attitude came in *Ex Parte Crouse*, 4 Whart. 9 (Pa. 1839) (per curiam), in which the Pennsylvania Supreme Court rejected a habeas corpus petiton brought by a father seeking release of his child from Philadelphia's House of Refuge:

> "The object of the charity is reformation, by training its inmates to industry; by imbuing their minds with principles of morality and religion; by furnishing them with means to earn a living; and above all, by separating them from the corrupting influence of improper associates. To this end, may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae*, or common guardian of the community?"[39]

Efforts to create separate *correctional* facilities for juveniles and adults blossomed in the late 1890s and early 1900s into the juvenile *court* movement, which swept rapidly across the United States following the enactment in 1899 of the Illinois Juvenile Court Act.[40]

> "The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that a society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was 'guilty' or 'innocent' but 'what is he, how has he become what he is, and

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[39] *Ex parte Crouse, supra*, 4 Whart. at 11.

[40] Illinois Juvenile Court Act, [1899] Ill. Laws 133. On the history of juvenile court movement, see generally PLATT, THE CHILD SAVERS; H. LOU, JUVENILE COURTS IN THE UNITED STATES (1927); Mennel, *Origins of the Juvenile Court: Changing Perspective on the Legal Rights of Juvenile Delinquents*, 18 CRIME & DELINQ. 68 (1972).

> what had best be done in his interest and in the int
> of the state to save him from a downward career.'
> child — essentially good, as they saw it — was to be r
> 'to feel that he is the object of [the state's] care
> solicitude,' not that he was under arrest or on trial.
> rules of criminal procedure were therefore altog
> inapplicable."

In re Gault, 387 U.S. 1, 15 (1968).[41] These lofty principle
the reformers "to a peculiar system for juveniles, unkno
our law in any comparable context" *id.* at 17.[42] The juv
court system was characterized by a lack of formal adve
proceedings, by extensive prehearing investigation c
offender's background and social circumstances, and b
attempt to prescribe for each offender a rehabilitative pro
most fit for his needs.[43]

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[41] As one author has put it, "[t]he critical philosophical positi
the reform movement was that no formal, legal distinctions sh
be made between the delinquent and the dependent or negle
The adolescent who broke the law should not be viewed and tr
as an adult offender . . . He should not be considered an enemy
ciety but society's child who needs understanding, guidance and
tection. The goals of the program are rehabilitation and prote
from the social conditions that lead to crime." Handler, *The Ju
Court and the Adversary System: Problems of Function and Form*,
WISC. L. REV. 7, 9-10.

[42] Even prior to the 1899 Juvenile Court Act, a number of
had enacted certain limited procedural reforms to shield ju
offenders from full participation in the adult criminal proces
PRESIDENT'S COMMISSION ON LAW ENFORCEMENT
ADMINISTRATION OF JUSTICE, TASK FORCE REP
JUVENILE DELINQUENCY AND YOUTH CRIME 2-3 (
[hereinafter cited as PRESIDENT'S COMMISSION, JUVE
DELINQUENCY].

[43] See generally, Paulsen, *Fairness to the Juvenile Offend*
MINN. L. REV. 547-550 (1957); Note, *Juvenile Delinquents: T
lice, State Courts, and Individualized Justice*, 79 HARV. L. RE
(1966).

The *parens patriae* idea implicit in the juvenile court spread quickly. By 1910, at least 34 States had enacted form of juvenile court statute,[44] and Professor Julian could assert that "[t]he past decade marks a revolution i attitudes of the state toward its offending children."[45]

It is well-known that during the succeeding half cen every State has chosen to adopt comprehensive juvenile systems.[46] These systems have been upheld against rep legal attack "on the theory that the state is merely acti *parens patriae* for the youngster's protection in the [same as it does in a guardianship matter and not accusing the with a view to punishment as it does in a prosecutio crime."[47]

These statutory reforms have not come from state islatures alone. In 1950 Congress enacted federal legislati accommodate the special needs of young offenders. The eral Youth Corrections Act,[48] under which federal judge obligated to consider the special sentencing alternatives ated by the Act before sentencing any youth between the of sixteen and twenty-two, was "an outgrowth of recom dations made by the Judicial Conference of the U States," and was expressly "designed to provide a b method for treating young offenders convicted in fe

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[44] RUSSELL SAGE FNDN., JUVENILE COURTS IN UNITED STATES 124(1910).

[45] Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).

[46] See *Kent* v. *United States*, 383 U.S. 541, 554 n.19 (1966) rent juvenile statutes in force in each State are cited and summ in S. DAVIS, RIGHTS OF JUVENILES: THE JUVENILE JUS SYSTEM (2d ed. 1980); see also M. LEVIN & R. S/ JUVENILE DELINQUENCY: A COMPARATIVE ANALYS LEGAL CODES IN THE UNITED STATES (1974).

[47] Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. 547, 549 (1957), and cases cited therein at n.10.

[48] 18 U.S.C. § 5005 *et seq.*

courts in that vulnerable age bracket, to rehabili
restore normal behavior patterns." *Dorszyn*
States, 418 U.S. 424, 432-33 (1974). Congress ha
a separate statutory scheme to cover federal ju
ders under eighteen, the Federal Juvenile Delin
and has dealt with juvenile offenders in other
well.[50] The federal executive branch has co
number of national studies during the past fifty
examining the juvenile justice system and recon
provements.[51]

This evolving special concern for juvenile offe
been reflected in judicial decisions in those Sta
mit their appellate courts to reduce criminal
grounds of excessiveness. Here, the mitigating
has been widely recognized.[52]

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[49] 18 U.S.C. § 5031 *et seq.*

[50] Juvenile Justice & Delinquency Prevention A
U.S.C. § 5601 *et seq.*; Juvenile Delinquency Preventi
Act, 42 U.S.C. § 3801 *et seq.*

[51] See NATIONAL COMMISSION ON LAW
AND ENFORCEMENT: THE CHILD OFFENDER
ERAL SYSTEM OF JUSTICE (1931); PRESIDEN
SION, JUVENILE DELINQUENCY; NATIONA
COMMISSION ON CRIMINAL JUSTICE STAN
GOALS, JUVENILE JUSTICE AND DELINQUE
TION (1976).

[52] *See, e.g.,*: *Alabama: Bracewell* v. *State*, ____ So.2
App. 1980) ("[W]e would likewise direct the trial c
reconsider the imposition of the death sentence wher
circumstances weigh heavily in the appellant's favor
age and the dominance of the husband, her senior b
Id. at ____).

Alaska: Troyer v. *State*, Adv. 2138, 614 P.2d 31
reduces burglary sentence of 18-year-olds becaus
offense); *Ahvik* v. *State*, Adv. 2123, 613 P.2d 125
reduces rape sentence of an 18-year-old because of
family abuse).

Arizona: State v. *Maloney*, 105 Ariz. 348, 464, P.2d
400 U.S. 841 (1970) (court reduces death sentence i
on defendant who killed his parents at age 15. "Tl
committed a heinous crime, the sheer brutality o
tionably shocked the jury . . . His trial testimony on
defense was unbelievable and repulsive. Had he be
the death penalty would have gone undisturbed by t
cause of his immaturity we are persuaded that h
. . . ." *Id.*, 105 Ariz. at 360, 464 P.2d at 805.); *Stat*
Ariz. 183, 261 P.2d 997 (1953) (court reduces rape
feel that the wrong may be ascribed more to the fo
this era of confusion and frustration than to a wick
heart. Defendant was approximately 17 years of age
mature both in judgment and exercise of discretion.
187, 261 P.2d at 1000.)

Colorado: People v. *Cohen*, ___ Colo. ___, 617 P
(court reverses as excessive 20-year second-degr
tence of a 24-year-old with no prior record).

Connecticut: State v. *Comstock*, 25 Conn. Supp. 45
(1965) (court suspends sentence for breaking and e
because defendant was 16); *State* v. *Rodriguez*, 25 C
204 A.2d 37 (1964) (court reduces manslaughter s
because "[t]he defendant has no prior record and is
of age," *id.*, 25 Conn. Supp. at 352, 204 A.2d at 3

Florida: Vasil v. *State*, 374 So.2d 465 (Fla. 1979) (c
year-old defendant's death sentence).

Idaho: State v. *Linebarger*, 71 Ida. 255, 232 P.2d 6
reduces sentence for rape. "[A] boy of *twenty* years
be sent to the penitentiary and his life completely r
71 Idaho at 273, 232 P.2d at 682.)

Illinois: People v. *Wilkins*, 36 Ill. App. 3d 761, 344 N
(court reduces murder sentence. "At the time of tr
was 17 years of age and had no prior criminal record
ing high school and would have graduated but for th
though the nature of the crime is extremely serio
imposed does not adequately reflect the possibility o
rehabilitation." *Id.*, 36 Ill. App. 3d at 767, 344 N.E.
ple v. *Howell*, 16 Ill. App. 3d 989, 307 N.E.2d 1

reduces attempted murder sentence. "D
record, but while in the juvenile system h
completing a course in drafting, and after l
went to the Gateway House, a rehabilitati
felony conviction . . . Many of his problem
an unstable family life and limited job o
App.3d at 994, 307 N.E.2d at 175.)

Kentucky: Workman v. *Commonwealth*, 42
(court reduces sentence of life without pa
tence "shocks the general conscience of so
ble to fundamental fairness. The intent of
with the incorrigible individual who pres
society; incorrigibility is inconsistent with
378); *Fryrear* v. *Commonwealth*, 507 S.W.
true that we have excepted juvenile offend
a sentence to life without benefit of parole.
not whimsical. It was based on the fact that
been labeled as a separate class. We think
one." *Id.*, 507 S.W.2d at 146).

Louisiana: State v. *Sepulvado*, 367 So.2
reduces statutory rape sentence of an 18-y
So.2d 118 (La. 1979) (court reduces conse
robbery and attempted murder where de
first offender with no prior history of viol

Mississippi: Coleman v. *State*, 378 So.2
reduces death sentence of a 16-year-old. "
did the 16-year-old Coleman shoot. Agair
tunity to shoot [the victim's wife], who
not.")

Montana: State v. *Coughlin*, Mont. Senten
7A (1978) (review division reduces sente
the defendant and the recognized chance
v. *Stevenson*, Mont. Sentence Review Di
(review division reduces sentence where
and it is thought that there is a good char
case").

Nebraska: State v. *Stewart*, 197 Neb. 49
(court reduces death sentence of a 16-

whether his age 'excuses' the murder. Ob
fendant has been convicted of premeditat
ing the aggravating and mitigating circum
clude that the defendant's age at the t
absence of any significant criminal recor
the imposition of the death penalty upor
the public will be served and justice do
term of life imprisonment." *Id.*, 197 Neb
865-866.); *State* v. *Hubbard*, 200 Neb. 4
(court reduces robbery and larceny sen
view of youth and lack of substantial pri

New Jersey: State v. *Blanton*, 166 N.J.
(1979) (court reduces sentence for assau
because defendant was onl; 19 years old,
ground and no prior criminal record); *S*
334 A.2d 23 (1975) (court affirms senten
bery because of defendant's age, imm
record); *State* v. *Bess*, 53 N.J. 10, 24
reduces sentence for second degree mur
age, lack of prior record and good family

New York: People v. *Hiemel*, 49 App. Div
(1975) (court reduces sentence for first d
year-old defendant has used time in pris
ample of the rehabilitation heights attaina
al system by an inmate desirous of taki
tional facilities available." *Id.*, 49 App. D
at 731.); *People* v. *Martinson*, 35 App. Di
(1970) (court reduces homicide senter
youth and minor role in crime).

Oklahoma: Ezell v. *State*, 489 P.2d 781 (
reduces murder sentence because evide
fendant was 16 years old); *Bluejacket* v.
217 P.2d 848 (1950) (court reduces ma
of facts where defendant was 18 years o

Pennsylvania: Commonwealth v. *O'Brien*
894 (1980) (court vacates sentence for r
ant when "[t]he lower court made no re
he was required to take into consideratio
appellant's prior criminal record, his age,

To be sure, despite all of t
expressed for youth, there i
of the early goals of the juv
Indeed, "revisionist" critics
tions of the reformers were
benevolent than had long b
and procedures devised exp

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or his potential for rehabilitatio
896); *Commonwealth* v. *Green*
(court vacates death sentence
age is an important factor in d
penalty and should impose upo
ultra vigilant in its inquiry int
derer. That youthful age is an i
ted by the fact that so far as
under the age of 16 years and
years has ever suffered the de
Id., 396 Pa. at 147-148, 151 A

Tennessee: Mattino v. *State*, 53
(court reverses denial of proba
old. "The defendant is a first o
kind and, according to the pr
ment. He comes from a broke
school after the tenth grade . .

[53] "While there can be no do
juvenile courts, studies and c
questions as to whether actua
against theoretical purposes t
process from the reach of co
adults." *Kent* v. *United Stat*
McKeiver v. *Pennsylvania*, 403
COMMISSION ON LAW EN
TION OF JUSTICE: THE CH
SOCIETY 79-81 (1967) [here
MISSION: CHALLENGE OF

[54] *See, e.g.*, PLATT, THE
Juvenile Justice in America:
RIGHTS 63 (1975).

have proven detrimental.[55]
of the juvenile system has
ways. Perhaps most notable
imposing on the juvenile co
due process. *Kent* v. *United*
Gault, 387 U.S. 1 (1967); *I*
but cf. DeBacker v. *Brainard*
Pennsylvania, 403 U.S. 528
insisted that, in imposing th
tend to compromise soci
juvenile offenders. "It is cla
from the special procedure
than offset the disadvantag
normal due process. As we
due process standards, intel
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of the substantial benefits
Gault, supra, 387 U.S. at 21
efforts at correctional refo
juvenile offenders have a "
dicially compelled when th
tional facilities.[56]

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[55] *See, e.g.*, RUSSELL SAGE
CY — ITS PREVENTION AN

[56] *See, e.g., Nelson* v. *Heyne*,
417 U.S. 976 (1974); *Creek* v.
1967); *Martarella* v. *Kelley*,
Inmates of Boys Training School
1972); *Wyatt* v. *Stickney*, 344 F
The Right to Treatment and the
(1973); Kittrie, *Can the Right*
Juvenile Process? 57 GEO. L.J
the theory behind the right a
upon a recognition of the concu
sanctioning powers and its assu
sibility. Its implication is that ef
quo for society's right to exerc
870.

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Indeed, one writer
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institutions; diverti
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reaffirms the very
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3. The impact
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[57] Handler, *The Ju*
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COMMISSION: CH
sion does not conclu
time has come to jett
of children charged
As trying as are the
the criminal courts,
fall heir to much of
and the ideal of sep
ing.")

[58] Schultz, *The C*
DELINQ. 457, 474-

[59] Quoted in Kittr
the Juvenile Process

unlike very young
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In England, the
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[60] See pp. 21-22 *sup*

[61] ROYAL COMM
1953. REPORT (H.M

[62] W. BOWERS, E
also *id.* at 40, Table 2
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[63] *Id.*, at

[64] "Mos
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Id., at 32.

[65] See B
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Appendix

[66] *Id.*

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1864-1939	
1940-49	
1950-54	
1955-59	
1960-67	
Totals	

B = Black
W = White

Table
execution
date.

Age	Race
16	B
16	W
17	B
17	W
18	B
18	W
19	B
19	W

Examin
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(1) Th
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age 20 were executed during the decade of the 1940s, only 23 (39.7% of the 1940s total) were executed in the 1950s, and only 2 (3.5% of the 1940s total) in the 1960s. The reduction in the total number of adults and juveniles executed during this period, while also marked, was not nearly so steep as for juvenile offenders alone: 1174 persons were executed during the 1940s; 682, (58% of the 1940s total) in the 1950s; and 191 (16% of the 1940s total) in the 1960s. Thus, using either absolute or relative measures, the execution of juveniles was increasingly repudiated during this period.

(2) The execution of *younger* juveniles, those sixteen or seventeen, virtually ceased after the 1940s. Only five 16- or 17-year-olds were executed after 1950, only twelve 16-, 17-, or 18-year-olds during the same period.

(3) A dramatic difference is exhibited in virtually every decade and in every age category between black offenders and white offenders. A total of 146 blacks as compared to 51 whites below age 20 are reported to have been executed during the entire period. Thus, although blacks represented 54.5% of *all* executed offenders classified by race,[67] they comprised 74.1% of those under 20. Only two 16-, 17-, or 18-year old white children were executed after the 1940s as compared to 10 black children of the same ages. In many of the Southern states, virtually every juvenile offender executed throughout the period was black. (See, for example, Alabama, Florida, Georgia and Virginia in Appendix C, *infra*). Following a thorough analysis of the Teeters-Zibulka data on age, race and offense,[68] Professor Bowers observes:

> "[W]e have seen that among some 5,707 persons executed under state authority over the past one hundred years, blacks were . . . younger on the average than whites at execution, whatever their offenses and whether or not they had appeals . . ."[69]

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[67] W. BOWERS, EXECUTIONS IN AMERICA 78, Table 3-1 (1974).

[68] W. BOWERS, EXECUTIONS IN AMERICA 71-107 (1974).

[69] *Id.*, at 102.

It is impossible to say whether the differential treatment of young black offenders reflects in part the influence of race upon decisions by juvenile courts to transfer or relinquish jurisdiction to adult criminal courts.[70] Whatever its causes, a heavy concentration of blacks among those juveniles executed may suggest more widespread acceptance of the death penalty for black juvenile offenders than for juveniles as a whole. Looking only at white offenders, we see from Table Two that no persons under age eighteen have been executed since 1948.

One of the States with the greatest number of executions during the 1864-1967 period, California,[71] did not have information on either age or race accessible to Teeters and Zibulka during the period following 1938. Thus, complete California statistics are not reflected in the Teeters-Zibulka inventory or in our discussion above. However, independent studies of those persons executed in California provide a complementary portrait to the findings on age reflected in the Teeters-Zibulka inventory. One such study reveals that out of a total of 187 persons executed between 1938 and 1963,[72] only one person was under 20 years of age.[73] (Less than two years intervened between sentence and execution for the vast majority

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[70] Studies not focused upon capital offenses in particular have found that race may play a role in juvenile court transfers of serious youthful offenders to adult courts. Keiter, *Criminal or Delinquent: A Study of Juvenile Cases Transferred to the Criminal Court*, 19 CRIME & DELINQ. 528, 531 (1973); Thornberry, *Race, Socioeconomic Status and Sentencing in the Juvenile Justice System*, 64 J. CRIM.L., C. & P.S. 90 (1973).

[71] W. BOWERS, EXECUTIONS IN AMERICA 33-35, Table 2-1 (1974): California had 501 reported executions during the period.

[72] The study does not include data following 1963. However, the Teeters-Zibulka inventory indicates that only one person, Aaron Mitchell, aged 37, has been executed in California since 1963.

[73] Carter, *The Death Penalty in California: A Statistical and Composite Portrait*, 15 CRIME & DELINQ. 62, 66, Table 7 (1969).

of these inmates.)[74] A second study, prepared by the
fornia Department of Corrections, confirms this inform
for the years 1943 through 1963.[75]

To complete our review of the available historical infc
tion, we turn finally to data concerning the ages of
under sentence of death in late 1971, just prior to this C
decision in *Furman* v. *Georgia*, 408 U.S. 238 (1972). Ac
ing to the Justice Department, 14 out of 620 persons un
death sentence on December 31, 1971 were below age
Neither the names, exact ages nor crimes of the offende
indicated in this source. The figure of 14 thus does not r
the number below age 18 who would eventually have
executed, since none of these had exhausted their judici
peals, and none had made final clemency requests to the
spective governors. Other data reviewed would strongly
gest that the total of 14 included a large proportion of 18
19-year olds, a disproportionate number of them black.

While the data above provide, we believe, a reasonab
curate picture of the actual incidence of juvenile execu
during the past 50 to 75 years, it does not purport to in
what greater number of juveniles may have been *senten*
death — though not executed — during this period. We
of no central source from which to obtain such capita
tencing information, but would certainly expect that
tional numbers of sixteen-, seventeen-, and eighteen

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[74] *Id.*, Table 6. 158 out of 187 were executed less than 700 d
ter being sentenced.

[75] CALIFORNIA DEPARTMENT OF CORRECTIONS
SEARCH DIVISION ADMINISTRATIVE STATISTICS
TION, EXECUTIONS IN CALIFORNIA: 1943 THROUGH
Table 2 (1965).

[76] UNITED STATES DEPT. OF JUSTICE, LAW ENF
MENT ASSISTANCE ADMINISTRATION, NATI
PRISONER STATISTICS BULLETIN, No. SD-NPS-CP-1
ITAL PUNISHMENT 1971-72, 43-44, Table 11 (Dec. 1974

olds were given death sentences which were never carri
The reasons why the lives of these juvenile offende
spared are no doubt varied. Yet review of those pu
executive clemency decisions accompanied by expla
indicates that the youth of the offender has ofte
deemed the decisive factor in commuting or reducir
death sentences and lesser sentences. In one influenti
treatise on clemency,[77] the critical role of youth in cl
decisions was made clear:

> "*Age* is so entwined with all criminality and puni
> that it cannot well be eliminated. Youth is so fre
> involved with character, criminal intent, guara
> employment, degree of punishment, and the que
> moral guilt that it must be given weight."[78]

Discussing capital cases, the treatise grouped extreme
(or age) together with "weak mentality" and "extrao
provocation" as among those exceptional circumstanc
calling for the exercise of clemency:

> "There are capital cases in which the circumsta
> the commission of the crime, or the qualities, or t
> dition of the culprit, although legal guilt is undou
> once signal a middle ground and in which the tho
> the extreme penalty shocks the average mind . .
> a case presents features which induce such a s
> mind there can be no doubt that as to the punish
> least the case is exceptional and that natural equ
> for its modification. Nor can action to that en
> misinterpretation of the people's will. Cases of e
> youth or age, weak mentality, extraordinary prov
> or other extenuating circumstances . . . belong
> class."[79]

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[77] W. SMITHERS, TREATISE ON EXECUTIVE CLEMEN
PENNSYLVANIA (1909).

[78] *Id.*, at 170.

[79] *Id.*, 126-27. *See also* Barnett, *The Grounds of Pardon,*
L.REV. 205 (1927). Carl Sandburg has written eloque
Abraham Lincoln's many decisions granting executive pardo

A review of actual clemency decisions strong
this principle has guided many commutations
century.[80] Systematic studies of the clemenc
force the impression that youth plays a majo
minations to commute. One study of 232 pe
death sentences between 1907 and 1960 in th
Jersey reveals that "[t]he youngest age group
through 19] . . . whether compared to the
group (20 to 24 years) or to all other age gro
shows a significantly higher rate of commutati

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ing the Civil War, often on the ground of youth.
ABRAHAM LINCOLN: THE WAR YEARS, ch.
(1954).

[80] Many governors commute without written or p
randa, or without stating reasons. Among thos
reasoned decisions have been preserved, the followi
tative:

CALIFORNIA: REPRIEVES, COMMUNICATIO
DONS BY GOV. C. C. YOUNG, 1929-1930, 14-2
Ellis: death sentence commuted to life. Though shov
trial to be 18, he presented evidence to the Governo
he was possibly 17 at the time of the crime, thereby
mum statutory age for capital punishment in Califo
crime itself there are no extenuating circumstances,
of the defendant and the effect of association with tw
may be considered such."); *id.*, 33-35 (Joseph Tr
tence commuted to life. "Extreme youth" one fac
OF THE GOVERNOR CONCERNING PARDON
TIONS AND REPRIEVES GRANTED BY GOV.
JR. FOR PERIOD 1931-1933, 148-149 (1933
Nuchols: sentence for second degree murder co
served. "At the time he committed his offense, h
gling kid [16] from Tennessee, without any folks a
California a stranger, and tried a holdup to gai
excited and shot his victim, who died from the w

COLORADO: REPORT OF THE STATE BOARI
1893-1894, 23 (Frank Valentine: life sentence for
"because: First—The murder was planned by oth

tioner. Second—His youth at the time being a mer
of the one who committed the crime."); REPORT
BOARD OF PARDONS, 1895-1896, 21 (Henry
rape pardoned. "Pardon recommended for the f
First—Because of the many mitigating circumstanc
boy being eighteen years of age and the woman
time of the alleged commission of the offense, an
was often induced by the woman and an older s
earnings for drinks for them."): REPORT OF THE
OF PARDONS, 1905-1906, 67 (Joseph Lee Car
murder pardoned. "Prisoner was but a young b
drawn into a quarrel with a boy, and, being in a st
getting the worst of it . . . and in desperation he dr
knife, as he believed in defense of his life, and sta
ion, the stab resulting fatally later on.")

CONNECTICUT: Benjamin Reid: death sentence
"Some of the other factors were that Reid was a n
mental capacity, of a sordid, deprived background.
Clemency in Capital Cases, 39 N.Y.U. L. REV. 13
(1964) (Governor commuted without written opin

MASSACHUSETTS: H. BEDAU, THE DEATH
AMERICA: AN ANTHOLOGY, 426-427 (Anchor
early as 1900, Hosea M. Knowlton, then attorney
chusetts, recommended the commutation of the d
seventeen-year-old whose crime was particularly
ground that Massachusetts public sentiment woul
execution of so young a boy. . . . [In the 1940s], i
volving a seventeen-year-old boy, another Massach
the initiative and accepted a plea of guilty to second
on the ground that no Massachusetts governor wo
youthful an offender to be electrocuted.")

NEW YORK: MESSAGE OF THE GOVERNOR T
THE STATEMENTS OF THE PARDONS, C
AND REPRIEVES GRANTED DURING THE
(William H. Green & Louis King: 60 years for mu
time served. 18 and 17 respectively at the time of th
driver during a robbery. "In accordance with [the
of the Parole Board] and in view of the youthful
King at the time of the crime and their good condu
muting . . . to time served."); MESSAGE OF T

New Jersey may not be atypical. Its tr
age group . . . is essentially like tha
and Pennsylvania."[81]

TRANSMITTING STATEMENTS OF
MUTATIONS AND REPRIEVES GR
YEAR 1972, 6 (Jose Crespo: sentence of
murder commuted. "The crime was
Crespo, then 17 years old and a member
killed a member of a rival gang. Mr. Cresp
13½ years; over the course of his imprisor
substantial character transformation, dem
ademic and vocational achievements. Du
has obtained a high school equivalency di
ma, completed college courses in Englisl
tory, succeeded in becoming a fully compe
served as an academic teacher to his fello
of the Wallkill Correctional Facility Jayce
ordained a minister in the Samaria Evan

OHIO: ANNUAL REPORT OF THE C
ENCY, 1923-1924, 27 (Hilbert V. Sodd
degree murder; clemency recommended
Sodders, with two companions, . . . atten
saloon. In the melee which ensued, [a co
tor of the place from the effects of which
The three, all young fellows just beyond t
prehended and first degree convictions
Sodders escaped, lived an exemplary life

[81] Bedau, *Death Sentences in New Jerse*
L. REV. 1, 25 (1964). Bedau also notes

> "Prior to 1958-1959, there had bee
> the New Jersey Legislature since 19
> alty with imprisonment; that one eff
> the execution of a teen-age boy. The
> to death between 1907 and 1960,
> was electrocuted on January 5, 19
> also the youngest person executed.
> No. 64, calling for the abolition of
> substitution of life imprisonment,
> the Senate by a vote of 11 to 1, but
> the Assembly by a vote of 29-20."

Id., at 24.

The cited Pennsylvania study foll
ing death sentences in Pennsylvania
Of the 407 for whom age was knov
commutations. Among youth aged
numbers are small, 50 percent recei
other study of 660 persons who w
prison in North Carolina between 1
changes during the 1909-1954 peri
recurring in governors' statements i
of death sentence."[85] This study
course of the half-century, age play
cant role in commutation decisions:

> "As shown by Table 4, there h
> portion of commutation staten
> evidence in the case as justifyin
> cite the support of responsible
> which note requests from citize
> cy. *On the other hand, an increas*
> *tion statements point to age* or un
> offender."[86]

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[82] Wolfgang, Kelly and Nolde, *Compa*
Commuted Among Admissions to Death
P.S. 301 (1962).

[83] *Id.*, at 305. Wolfgang et al. note that
even though having committed a hein
tenced to death." *Id.*, at 302.

[84] Johnson, *Selective Factors in Capit*
FORCES 165 (1957).

[85] *Id.*, at 167, Table 4. (This Table is an

[86] *Id.*, at 168 (emphasis supplied). See
ment in Oregon, 1903-64, 45 ORE. L. R
ally, the youth of the murderer increases
tion. In other states, evidence shows th
had an even chance of commutation, s
Table VIII suggests this holds true in O

Our historical review s
Concurrently with the gra
States over the past century
juvenile offenders belong i
arate correctional facilities
parens patriae pursuant to
marked decline in the nur
penalty of death. Among
punishment has been virtu
since the 1940s; and even
quently imposed. Special co
jor theme of appellate sen
clemency decisions as well

C. Contemporary Legisl

Following this Court's le
U.S. at 592, and *Gregg* v.
next look to "legislative a
evolving standards on the
juveniles. Beginning with t
we note that at least six o
valid statutes have enacted
tion of young people.[87] Mo
specifically enumerate miti

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[87] CAL. PENAL CODE § 1
COLO. REV. STAT. § 16-11
GEN. STAT. ANN. § 53a-46
ILL. REV. STAT. ch. 38, § 9
18); NEV. REV. STAT. § 17
TEXAS PENAL CODE ANN
1981)(under 17).

[88] A number of States, incl
nois, Oklahoma, South Dako
mitigating circumstances by s
tion of any relevant mitigatin

[89] 1981 ALA. ACTS, §
703G.5(Supp. 1980); ARK
1979); CAL. PENAL CODE

(or apparently all but India
have designated an offend
factor.

Beyond the capital statut
tion establishing juvenile c
ment of society's evolvin
ders. Among the 50 States,
years as the appropriate

REV. STAT. ANN. § 16-11
STAT. ANN. § 53a-46a(f) (W
§ 921.141(6)(g) (West Supp.
(b)(8)(Supp. 1980); LA.
905.5(f)(Supp. 1981); M
§ 413(g)(5)(Supp. 1980)
101(6)(g)(Supp. 1979); MO.
1981); MONT. REV. CODES
REV. STAT. § 29-2523(2
§ 200.035(6)(1979); N.I
II(b)(5)(Supp. 1979); N.M.
1980); N.C. GEN. STAT. §
CONS. STAT. ANN. § 1311(e
3-20(c)(b)(7)(Supp. 198
2404(j)(7)(Supp. 1980): UTA
1979); VA. CODE § 19.2-26
ANN. § 6-4-102(j)(vii)(Supp.

[90] IND. CODE ANN. § 35-5

[91] N.Y. PENAL LAW § 12
open the possibility of a ma
category of homicide. In *Peopl*
735 (1977), the New York Co
with this possible exception.
that time.

[92] VT. STAT. ANN. tit. 13, §
predates this Court's opinion
(1972) and does not provide
have been no prosecutions ur

[93] ALA. CODE § 12-15-1(3
10-010(a)(Supp. 1979); ARIZ
ARK. STAT. ANN. § 45-406.

jurisdiction. One
specify age 17, an

CODE § 300 (West
103(3)(1978); DEL
FLA. STAT. ANN.
STAT. § 571-11
1802(c)(Supp. 198
1979); IOWA COD
§ 38-802(Supp. 198
1980); ME. REV. S
MD. CTS. & JUD.
STAT. ANN. § 260.
21-5(c)(Supp. 1979
NEB. REV. STAT.
§ 62.020(2)(1979);
1979); N.J. STAT.
ANN. § 32-1-3(A)
02(1)(Supp.
§ 2151.01.1(B)(1)(S
§ 1101(a)(Supp. 19
1980); R.I. GEN.
COMP. LAWS § 26
202(1)(Supp. 1980
1979); VA CODE
CODE ANN. § 13.
§ 49-5-1(a)(1980);
1980).

[94] WYO. STAT. A

[95] GA. CODE A
ch. 37 § 702-2(
§ 13.1569(3)(Supp.
(Supp. 1981); MI
1981); MO. REV. S
20(c)(Supp. 1980)
1980).

[96] CONN. GEN.
FAM. CT. ACT
STAT. § 7A-517(1
§ 632(a)(1)(Supp.

model standards
which set 18 as th

Concededly, a
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rent jurisdiction b
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[97] UNITED STA
TION & WELFA
DREN'S BUREA
FAMILY COURTS
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level [18 years] of j
COMMISSIONERS
JUVENILE COUR
STATES DEPART
FOR JUVENILE
TION, WORKING
TO DEVELOP STA
TICE AND DELIN
DELINQUENCY 1
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TION, JUVENILE
TIVE STANDAR
years).

[98] In 46 States, c
serious felonies can
of jurisdiction or co
DAVIS, RIGHTS
SYSTEM, ch. 2, *Ju*
Frey, *The Crimina*
WASH. U. L. Q. (1

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[99] The
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[100] See
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[101] *See,*

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[102] AME
§ 210.6(1
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[103] AME
§ 210.6, C
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ment policies, 73 of 91 countries reporting a minimum age for execution required the offender to be at least 18 years old.[104] Subsequent reports of the Secretary General of the United Nations confirm that "[t]he great majority of Member States report never condemning to death persons under 18 years of age."[105] The statutes of virtually all of the Western and Eastern European countries which permit capital punishment in peace time[106] nevertheless prohibit execution of persons under age 18.[107]

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[104] Patrick, *The Status of Capital Punishment: A World Perspective*, 56 J. CRIM. L., C. & P.S. 397, 410 and Table 1, 398-403 (1965). The countries Patrick lists as permitting executions of juveniles under 18 include: Afghanistan, Central African Republic, Ceylon, Cyprus, Finland, Ghana, Haiti, India, Ireland, Republic of Korea, Laos, Liberia, Malaya, Nepal, Territory of New Guinea, Nigeria, Pakistan, and the Union of Soviet Socialist Republics. Patrick notes that several of the countries which have set minimum ages below 18 follow the English common law; he adds: "[I]t again must be recognized that what is possible by law may be highly improbable by custom or practice." *Id.*, at 410.

[105] UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, REPORT OF THE SECRETARY GENERAL, CAPITAL PUNISHMENT 10 (1973); see also UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, REPORT OF THE SECRETARY GENERAL, CAPITAL PUNISHMENT (E/5616)(1975); UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, REPORT OF THE SECRETARY GENERAL, HUMAN RIGHTS QUESTIONS, CAPITAL PUNISHMENT (E/1980/9)(1980) [hereinafter cited as U. N. SEC. GEN. 1980 REPORT]. In a table appended to his 1980 report, the Secretary General indicates that among the 62 nations responding during the years 1974-1978, 343 persons age 18 or older were reported executed, while no person under age 18 was reported executed. *Id.*, Table 1, 17-18.

[106] The following European countries altogether prohibit capital punishment in peacetime, either by constitutional provision or by statute: Austria, Denmark, Federal Republic of Germany, Finland, Great Britain, Iceland, Italy, Luxembourg, Malta, The Netherlands, Norway, Portugal, Spain, Sweden, and Switzerland. U.N. SEC. GEN. 1980 REPORT, Annex, at 6.

[107] Belgium: LES CODES LARCIER, CODE PENAL, ch. VIII, 77; Bulgaria: DAS BULGARISCHE STRAFGESETZBUCH VOM

The consensus of the international community against the execution of juveniles under age 18 is reflected as well in the provisions of two human rights covenants. The International Covenant on Civil and Political Rights[108] contains an express provision that a "[s]entence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."[109] The American Convention on Human Rights[110] similarly provides that "[c]apital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age . . ."[111]

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16 MAERZ 1968 (NAKAZATELEN KODEKS, Art. 38(2)(1973)(20 years); Czechoslovakia: PENAL CODE OF 1961, § 29(3), trans. in Solnar, *The Conditions of Criminal Liability Under the New Czechoslovak Penal Code of 1961*, 20 BULL. CZECHOSLOVAK LAW 1, 67-68 (1962); France: C. PEN., art. 66 (under some circumstances, 16 years); German Democratic Republic: STGB. DDR. §§ 60(2), 65; Hungary: CRIM. CODE OF HUNG. PEOPLES REPUB. § 39.(1), trans. in 1 HUNG. L. REV. 25, 34 (1980)(21 years); Poland: PEN. CODE OF THE POLISH PEOPLE'S REPUB., art. 31, (trans. by W. KENNEY & T. SADOWSKI 1973); Romania: PEN CODE OF THE ROMANIAN SOCIALIST REPUB. art. 54 (trans. by S. KLECKNER 1976)(20 years); Turkey: TURKISH CRIM. CODE, ART. 55.1 (trans. by N. GURELLI 1980); USSR: SOVIET CODES OF LAW, art. 23 (W. SIMONS ed. 1980). *But cf.* Greece: GREEK PEN. CODE, arts. 121, 122, 127 (trans. by N. LOLIS 1973) (17 years).

[108] International Covenant on Civil and Political Rights, *entered into force* March 23, 1976, G.A. Res. 2200A, 21 U.N. GAOR, supp. (No. 16) 49, 52, U.N. Doc. A/6316 (1967).

[109] *Id.*, art. 6(5).

[110] American Convention on Human Rights, *entered into force* July 18, 1978, O.A.S. Doc. OEA/SER. K/XVI/1.1 Doc. 65 (1970), *reprinted in* [1969] YEARBOOK ON HUMAN RIGHTS 390 (United Nations).

[111] *Id.*, art. 4.5

Both covenants have been ratified by numerous coun
the International Covenant by at least 60,[112] the Ame
Convention, by 14.[113] On June 1, 1977, President Ji
Carter signed the American Convention,[114] and on Octo
1977, he signed the International Covenant.[115] Both
transmitted to the Senate for advice and consent on Feb
23, 1978, together with certain proposed reservations an
derstandings.[116] The Senate has not yet formally ratified
covenant.[117]

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[112] *International Human Rights Treaties: Hearings Before the*
Comm. on Foreign Relations, 96th Cong., 1st Sess. 520 (
[hereinafter *"Senate Treaties Hearings"]*

[113] *Id.* at 506.

[114] *Id.*

[115] *Id.* at 520.

[116] *Id.* at 506, 520. See generally Weissbrodt, *United States Ra*
tion of the Human Rights Covenants, 63 MINN. L. REV. 35 (
Among the reservations to the International Covenant was one
cent to the clause on execution of juveniles stating: "The U
States reserves the right to impose capital punishment on any p
duly convicted under existing or future laws permitting the in
tion of capital punishment." *Senate Treaties Hearings*, at 522. A
nent reservation to the American Convention reads: "United
adherence to Article 4 is subject to the Constitution and other
the United States." *Id.* at 508. In response to sharp criticism o
reservations by the Lawyers' Committee for International H
Rights, see *id.* at 48-50, the Department of State remarked:
purpose of that reservation, like the other reservations, is to
the assumption of an international obligation to meet certain
ards which U.S. domestic law does not currently meet. Its p
was certainly not the preservation of any right to execute chil
pregnant women, something never done in the United States.
55.

[117] See generally *Report of the Committee on International*
Rights, United Nations Human Rights Covenants, 36 THE RE
of the Association of the Bar of the City of New York 21
1981).

In sum, the relevant evidence of legislative attitude
the state, federal and international levels — points c
cingly to 18 as the minimum age below which executic
youthful offender would be offensive to contemporary
ards of human decency.

D. The Response of Capital Juries

The third source to which we look to ascertain cont
rary societal standards regarding capital punishme
juveniles is "the response of juries reflected in their se
ing decisions." *Coker* v. *Georgia, supra,* 433 U.S. at 59
fortunately, little helpful information about the ages
sons sentenced to death appears to have been collecte
tematically since this Court's opinion in *Furman* v. *G*
The annual reports on capital punishment prepared by t
partment of Justice contain some information on ag
until 1974, sentences of all offenders "under 21"
grouped together.[118] Since 1974, the lowest age groupi
ported for all offenders has been "under 20 years."
most recent report available shows that among 567 off
under sentence of death as of December 31, 1979, eleve
percent) were in the "under 20 years" category.[120] By
parison, 145 (25.5 percent) were in the next oldest age
ry, from 20 to 24 years; and 151 (26.6 percent) were in t
category from 25 to 29 years.

To update and clarify these figures, we have cor
prison authorities and other knowledgeable sources in

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[118] *See, e.g.,* UNITED STATES DEPT. OF JUSTICE, LA
FORCEMENT ASSISTANCE ADMINISTRATION, NATI
PRISONER STATISTICS BULLETIN, NO. SD-NPS-CP-2,
ITAL PUNISHMENT 1973 26, Table 7 (March 1975).

[119] *See, e.g.,* UNITED STATES DEPT. OF JUSTICE, BU
OF JUSTICE STANDARDS, NATIONAL PRIS
STATISTICS, NCJ-70945, CAPITAL PUNISHMENT 1979
ble 29 (Dec. 1980).

[120] *Id.*

State with offenders presently under senten
order to obtain information on all offenders ag
at the time of the commission of their crimes.
of May 1, 1981, are presented in Table Three b

TABLE 3

**Juveniles Under Sentence of Death By
At Time of Commission of Crime,
As of May 1, 1981**

Age	B	W	H	N
15	0	1	0	
16	3	2	0	
17	7	4	0	
18	9	3	1	
19	14	15	3	

W = White
B = Black
H = Hispanic
NA = Native American

The total number of offenders currently un
death for crimes committed while they were le
old thus appears to be 17 (2.1 percent) of the t
population of 794.[122] The total number of juve
to death for crimes committed while 16 or yo
as young as petitioner Monty Eddings — is 6.
of one percent of the current condemned popu

[121] A full listing of all condemned persons below
us as of May 1, 1981, grouped by age, name, race,
as Appendix E *infra*.

[122] NAACP LEGAL DEFENSE AND EDUCA
INC., DEATH ROW U.S.A. 1 (April 20, 1981).

[123] The State of Oklahoma, where petitioner Edd
tion, has apparently never executed anyone under
18-year-old was executed in Oklahoma in 1933, ar

One additional factor of significance clear
that, while blacks currently comprise 40.5 pe
demned population,[124] they represent 10 of th
juveniles under 18 (59 percent), continuing t
representation of young blacks on death rows
ing the general overrepresentation of blacks i
their numbers in the population), a pattern w
figures from previous decades.[125]

The numbers also suggest that juries and s
are reluctant to impose the death penalty on
deed, a notable increase appears when one e
recent Department of Justice figures[126] to c
number of condemned inmates under age 2(
with the numbers for older inmates (ages 20-
29, 151).[127] Apparently, only when offenders
twenties does society's impulse to shield the
full harshness of its most extreme crimin
abate.[128]

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in 1937. The remainder of the 83 persons executed
1915 were at least 20 years old. W. BOWERS, E
AMERICA, 343-345 (1977).

[124] NAACP LEGAL DEFENSE AND EDUCA
INC., DEATH ROW, U.S.A. 1 (April 20, 1981).

[125] See discussion at 38-39 *supra*.

[126] We were unable, within the time permitted
this brief, to obtain individual age information on
30 who were under sentence of death as of May 1,
reason, however, to doubt the reliability of the mo
Prisoner Statistics figures for 1979, or to believe th
of condemned persons in the various age brac
altered significantly in the eighteen months sinc
published.

[127] UNITED STATES DEPT. OF JUSTICE, B
TICE STANDARDS, NATIONAL PRISONER S
70945, CAPITAL PUNISHMENT 1979, 72, Tabl

[128] It is not likely that scarcity of death sentences
under age 18 simply "reflect[s] the humane feelin

E. Conclusion

All the indicia of contemporary stan
tory and precedent, legislative enactm
— demonstrate a rejection of the dea
able societal response to juvenile c
murder. Our society has learned toc
century about the special nature of cl
lent developmental pressures which p
as well as about the encouraging
possessed by many disturbed young
them its most terrible and final punis
ern history of juvenile justice argues
response, even for outrageous and u
havior.

Yet these objective factors do not
for "the Constitution contemplates th
ment [of this Court] will be brought t
the acceptability of the death pen
Amendment," *Coker* v. *Georgia, supr*
sue is whether the execution of juver

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revocable of sanctions should be reserve
treme cases." *Gregg* v. *Georgia, supra,* 4
when Oklahoma's present statute was ena
have committed homicides far more ag
tioner Eddings, and with fewer mitigati
State v. *Jimmy Derrell Scott,* No. CRF
Cty.) (Defendant was 17 when he kidnap
same night, robbed both, killed one afte
and abandoning victim on roadside;
exchange for a plea on Nov. 2, 1977; *Stat*
79-4516 (Dist. Ct. Okla. Cty.) (Defend
sodomized and murdered an elderly wor
ing burglary of her residence; received lif
plea); *State* v. *Quintus Lamar Kezzec,* N
Okla. Cty.) (Defendant was 16 when he
old jewelry dealer with .22 pistol; receiv
these more extreme cases was a death

basic concept of human dignity at
ment." *Gregg* v. *Georgia, supra,* 428

Surely it does not. The Eighth A
the extreme sanction of capital puni
consideration of "compassionate or
ming from the diverse frailties of h
North Carolina, supra, 428 U.S. at
unique frailties of youth are universa
to the proper disposition of children
of all degrees of seriousness, it is sim
concept of human dignity embodie
ment could tolerate the execution o
Some minimum age of susceptibilit
death must be recognized by a cons
decency will fix the outer boundaries

The problem, of course, here as el
of constitutional law, resides in drawi
15, 18, 20? The inevitability of the di
is endemic to a Constitution that has
the vagaries of isolated juries and
exclusively and irremediably the st
science. And if a line must be drawn
the appropriate place to draw it is at
to the present subject than in many
overwhelming concentration of the
scribed above fixes age 18 as the
sibility with a clarity that is not mer
pelling when the gravest penal sanct
to be exacted of its youth.

II

THE EXECUTION OF PETI VIEW OF THE OVERWHELM CUMSTANCES IN HIS CASE EXCESSIVE AND DISPROP MENT FORBIDDEN BY TH TEENTH AMENDMENTS

In the present case, however, the
question whether the execution of ch

invariably cruel and unusua
sentence of death can and sh
Amendment as excessive a
"relevant facets of the ch
dividual offender [and] the
offense." *Woodson* v. *North*
The Court has long recogn
punishment for crime shou
to offense," *Weems* v. *U*
(1910); and the Court has
claims that a particular dea
proportionate, *see, e.g., Woo*
U.S. at 305 n.40; *Lockett* v.
Bell v. *Ohio, supra,* 438 U.S
—— U.S. ——, 49 U.S.L.W
1981)(No. 79-6740), althou
required to decide those cla

Here, petitioner Eddings
dence of at least three fac
overwhelmingly mitigate
barely sixteen at the time
the uncontradicted testimo
gist at Oklahoma's Easter
age "was far younger," "
three months [to] fourteen
Richard Rettig, an Associa
Roberts University, concur
"in [his] best judgment . .
me to be several years belo
"He's been unable to deve
ments [and] often acts out
year old child" (*id.*). Thu
act of a very young juven

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[129] The trial judge's reports
that Monty Eddings' birthdat
sixteen years and four month

and emotional age made h
outlook. This Court, as w
repeatedly identified the y
most significant mitigating

Second, this record is re
act stemmed in large part f
his chaotic childhood and
anger with which Eddings r
President's Commission o
ministration of Justice coul
Eddings when it set forth
delinquency:

> "He is 15 or 16 years
> — perhaps representin
> live with their mother
> female-centered. It m
> had a resident father.
> grownup man well en
> emulating him. From
> charge of him he has
> perhaps indifference, i
> sion. All his life he ha
> and by now his mothe
> and goings, little way
> policeman brings him
> the mail."[131]

Admixed into this formu
an additional ingredient —
his father (A. 113) and by
liceman (A. 170). Eddings'
and morally unacceptable,

> "Clinical experience h
> been exposed early in

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[130] See pages 19-20 *supra*.

[131] PRESIDENT'S COMMIS
60.

lence, whethe
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becomes an ea
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ter of learning
but because
whelmed him
immature to w
violence. Som
his sense of r
against impuls
which may lea
reactions — o

The Model Pen
merous states[134] ha
cance of actions c
tional disturbance.
treme emotional t
homicidal act, *Goe*
(1980); see also *B*
tional instability")
U.S. at 637 ("extr
this case, substan
persuasively sugge
rational deed of a
uncalculated resp
rooted, explosive
proved too immat

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[132] K. MENNING
(1966). See also th

[133] AMERICAN
§ 210.6(4)(b) (Prop

[134] See Liebman
Beyond the 'Boiler P
66 GEO. L.J. 757,
158.

Eddings' violer
tern of serious vi
prior criminal co
this case. The Sta
count this factor
harm (A. 77, 1(
patrolmen long a
after he had stoc
own choice, acco
interrogation (A.
acting on such t
Crabtree — Eddi
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proached to arre
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the ground" (A.

This non-bellig
minor juvenile r
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fight" among sev
tion that Edding
lence or in any s
minor criminal in
Eddings as "abs
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habilitation, and
or dangerous.

Nor was the cri
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the medical exar
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446 U.S. at 425 (
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raised b
(1970) (p
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"to deci
broader
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The s
15 and
decision
judge, si
constitu
Lockett
Oklahor
addresse
its resp
§ 701.13
additior
death,"

Alabama,
supra, 43
Court ma
v. *New*
service o
novel co
of Labor

Locket

"the
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not
any
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prof

438 U.S.
his oral fi

"No
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[135] Unde
cally enum
effective J
ing, evider
as to any
No judicia
Oklahoma
when his
Oklahoma
statutory s

there is some statutory authority in the State that the age of a Defendant can be considered.

" . . . I have given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty. On the other hand, the Court cannot be persuaded entirely by the youthfulness of the fact that the youth was sixteen years old when this heinous crime was committed. *Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background.*

• • •

"*So not finding any mitigation other than the youthfulness,* and failing to find that it has sufficiently softened the aggravating circumstances that the Court has found beyond a reasonable doubt, the Court has no alternative in this particular case other than to sentence Monty Lee Eddings to death."

(A. 188-189) (Emphasis supplied).

As reported more fully in the Statement of Facts,[136] there had been substantial mitigating evidence presented by petitioner Eddings' counsel at the sentencing hearing concerning Eddings' "violent background," which the trial judge thus believed himself obliged by law to disregard. This included testimony that after Eddings' parents' divorce, his mother had become an apparent alcoholic and prostitute (A. 110); that Eddings was beaten by his policeman step-father (A. 170); that his natural father, an "authoritarian," often beat him, slapped him (A. 113), and engendered in him feelings of bitterness, hostility and fear (*id.*); that he developed a psychological condition, in part because of these events (A. 171); and that his fatal outburst against Patrolman Crabtree was psychologically precipitated in some measure by this violence in his own past (A. 172).

---

[136] See pages 13-19, *supra.*

Unquestionably, this evidence points to "special facts about this defendant that mitigate against imposing capital punishment," *Gregg* v. *Georgia, supra,* 423 U.S. at 197. *See, e.g. (Harry) Roberts* v. *Louisiana, supra,* 431 U.S. at 637 (describing evidence of "emotional disturbance" as mitigating, in addition to evidence of "youth"); *Bell* v. *Ohio,* 438 U.S. 637, 641 (1978) (referring to evidence of Bell's mental, emotional and drug problems); *Godfrey* v. *Georgia, supra,* 446 U.S. at 424 n.3 (1980) (referring to evidence of Godfrey's prior hospitalization for drinking problems); see generally, Liebman & Shepard, *Guiding Capital Sentencing Discretion beyond the "Boiler Plate": Mental Disorder as a Mitigating Factor,* 66 GEO. L. J. 757 (1978). The circumstances of Eddings' stormy childhood and adolescence, in short, were clearly "relevant evidence" on "why a death sentence . . . should not be imposed," *Jurek* v. *Texas, supra,* 428 U.S. at 271; and their consideration by the trial court was "a *constitutionally indispensable* part of the process of inflicting the penalty of death." *Woodson* v. *North Carolina, supra,* 428 U.S. at 304 (emphasis supplied).

There is no way to ascertain from this record whether, had the trial judge felt legally free to consider such evidence, he might have reached a decision to impose a life sentence. His express statement that, "in following the law, [he could not] . . . consider the fact of this young man's violent background" manifestly "creates the risk that the death penalty [was] imposed in spite of factors which may call for a less severe penalty." *Lockett* v. *Ohio, supra,* 438 U.S. at 605. Petitioner Eddings' death sentence should therefore be vacated under *Lockett. See, e.g., Green* v. *Georgia,* 442 U.S. 95 (1979) (per curiam); *Gardner* v. *Florida,* 430 U.S. 349 (1977); *Andres* v. *United States,* 333 U.S. 740, 752 (1948); *Calton* v. *Utah,* 130 U.S. 83, 86-87 (1889); *cf. Stromberg* v. *California,* 283 U.S. 359, 367-68 (1931); *Street* v. *New York,* 394 U.S. 576, 587-88 (1969).

CONCLUSION

The judgment of the Oklahoma Court of Criminal App
affirming petitioner's sentence of death should be revers

Respectfully submitte

JAY C. BAKER
1850 South Boulde
Tulsa, Oklahoma 7
Court-appointed Couns
for Petitioner

IN THE

Supreme Court of the United State

OCTOBER TERM, 1980

No. 80-5727

MONTY LEE EDDINGS, *Petitioner,*

v.

STATE OF OKLAHOMA, *Respondent.*

APPENDICES

APPENDIX A

STATUTORY PROVISIONS INVOLVED

Okla. Stat. Ann. tit. 21, § 701.9

§ 701.9—Punishment for Murder

A. A person who is convicted of or pleads nolo contendere to murder in the first degree punished by death or by imprisonment for life.

Okla. Stat. Ann. tit. 21, § 701.10

§ 701.10—Sentencing Proceeding Murder in Degree

Upon conviction or adjudication of guilt of a d of murder in the first degree, the court shall c separate sentencing proceeding to determine wh defendant should be sentenced to death or life i ment. The proceeding shall be conducted by judge before the trial jury as soon as practica presentence investigation. If the trial jury l waived by the defendant and the state, or if th ant pleaded guilty or nolo contendere, the s proceeding shall be conducted before the cou sentencing proceeding, evidence may be preser any mitigating circumstances or as to any of the ing circumstances enumerated in this act. Only dence in aggravation as the state has made kno defendant prior to his trial shall be admissible. l this section shall not be construed to authoriz troduction of any evidence secured in violati Constitutions of the United States or of the Oklahoma. The state and the defendant or hi shall be permitted to present argument for or ag tence of death.

Okla. Stat. Ann. tit. 21, § 701.11

§ 701.11—Instructions — Jury findings of aggra cumstances

In the sentencing proceeding, the statutory tions as determined by the trial judge to be war

the evidence shall be given in the charg
the jury for its deliberation. The jury,
unanimous recommendation of death,
writing, signed by the foreman of the
aggravating circumstances or circum
unanimously found beyond a reasonat
jury cases, the judge shall make such d
at least one of the statutory aggravat
enumerated in this act is so found or
any such aggravating circumstance is
finding of one or more mitigating c
death penalty shall not be imposed. I
within a reasonable time, agree as to
judge shall dismiss the jury and imp
imprisonment for life.

Okla. Stat. Ann. tit. 21, § 701.12

§ 701.12—Aggravating Circumstances

Aggravating circumstances shall be:

1. The defendant was previously co
involving the use or threat of violenc

2. The defendant knowingly creat
death to more than one person;

3. The person committed the mur
tion or the promise of remuneration
other to commit the murder for rer
promise of remuneration;

4. The murder was especially hein
cruel;

5. The murder was committed f
avoiding or preventing a lawful arrest

6. The murder was committed by a
ing a sentence of imprisonment o
felony; or,

7. The existence of a probability
would commit criminal acts of violen
stitute a continuing threat to society.

Okla. Stat. Ann. tit. 21, § 701.13

§ 701.13—Death Penalty — Review of

A. Whenever the death penalty is i
the judgment becoming final in the t
tence shall be reviewed on the record
Court of Criminal Appeals. The clerk
within ten (10) days after receiving t
transmit the entire record and transcri
Court of Criminal Appeals together
pared by the clerk and a report pre
judge. The notice shall set forth the titl
ber of the case, the name of the defen
and address of his attorney, a narrativ
judgment, the offense, and the punis
The report shall be in the form of a
naire prepared and supplied by the C
Criminal Appeals.

B. The Oklahoma Court of Crim
consider the punishment as well as a
ated by the way of appeal.

C. With regard to the sentence, th
mine:

1. Whether the sentence of death
the influence of passion, prejudice, or
factor;

2. Whether the evidence supports
judge's finding of a statutory aggravati
enumerated in this act; and

3. Whether the sentence of death
proportionate to the penalty impose
considering both the crime and the d

D. Both the defendant and the st
right to submit briefs within the tim
court, and to present oral argument t

E. The court shall include in its dec
those similar cases which it took int

additional to its authority r
errors, the court, with regard
tence, shall be authorized to:

1. Affirm the sentence of d

2. Set the sentence aside
modification of the sentence

F. The sentence review sh
appeal, if taken, and the revie
solidated for consideration.
decision on legal errors enum
tiation of the verdict, and the

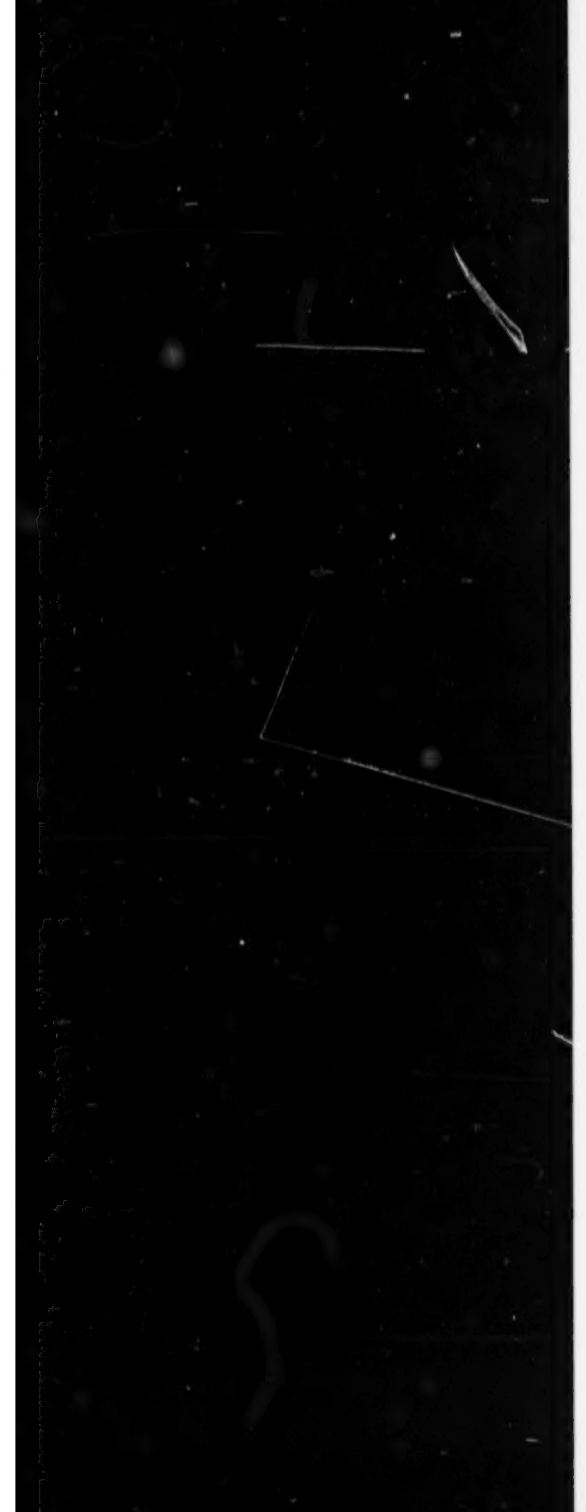
APPEND

**MEDIAN ELAPSED TIME I
SENTENCE OF DEATH A
CONVICTED MURDE
AND YEAR OF E**

State	1956	1957	19
Alabama	. . .	13.6	. .
Arizona	. . .	22.2	46
Arkansas	. . .	. . .	. .
California*	19.4	13.8	51
Colorado	18.4	7.9	. .
Connecticut	. . .	. . .	. .
Florida	24.5	29.6	36
Georgia**	11.9	10.3	14
Idaho	. . .	10.4	. .
Illinois	. . .	. . .	36
Indiana	. . .	. . .	. .
Iowa	. . .	. . .	. .
Kansas	. . .	. . .	. .
Kentucky	18.2	. . .	. .
Louisiana	23.3	24.0	12
Maryland	. . .	11.3	. .
Massachusetts	. . .	. . .	. .
Mississippi	7.8	24.1	29
Missouri	. . .	19.1	. .
Nebraska	. . .	. . .	. .
Nevada	. . .	. . .	. .
New Hampshire	. . .	. . .	. .
New Jersey	29.1	. . .	. .
New Mexico	16.4	. . .	. .
New York	10.8	21.4	19
North Carolina	23.7	. . .	11
Ohio*	13.2	6.8	12

State	1956	1
Oklahoma	14.6	1
Oregon	. . .	.
Pennsylvania	14.1	.
South Carolina	11.1	2
South Dakota	. . .	.
Tennessee	. . .	1
Texas	3.3	
Utah	78.7	.
Vermont	. . .	.
Virginia	. . .	
Washington	28.7	2
West Virginia	3.8	.
Wyoming	. . .	.
All states	14.0	1

*Bailey, *Deterrence and the Question In Deterrence Re* Table 1 (1980).



TEETERS – ZIBULKA
20 EXECUTED UNDI
1864-1967 BY STAT

STATE	NAME
ALABAMA	
No. 45	Wesley Vinc
46	Gabel Water
58	Frank Millh
62	Willie James
87	William Clar
102	Henry Danie
106	Daniel T. Re
110	F. Ernest Jol
126	J. C. Winters
133	Leveret For
141	Melvin Jacks
144	Jeremiah Re
148	Joe Henry J
—	
ARIZONA	
—	
ARKANSAS	
—	
CALIFORNIA	
Folsom	
No. 33	Earl Loomis
50	Ed Montijo
84	Aldrich Lut
San Quentin	
No. 47	William Wa
49	Henry Brow

STATE NA

54 Lo
75 Lo
77 Ch
98 Lo
106 La
122 Le
156 Ch
182 Ru

COLORADO

CONNECTICU

No. 9 Ch
11 Jos
20 Ra
51 So
62 Ca
66

FLORIDA

No. 14 Fo
47 Mc
64 Ro
73 Ivc
81 Na
82 Ed
83 Wi
106 Fre
107 Jar
120 Le
132 La
153 Na
158 Ab

STATE NA

GEORGIA

No.		
	10	Pri
	40	Ed
	64	Fre
	74	Ed
	90	Ric
	91	Ric
	92	Mc
	97	Gr
	100	Wi
	113	Ch
	124	Isa
	130	Jes
	136	Ed
	152	Le
	172	Ch
	185	Jar
	194	Fr
	195	He
	201	Ed
	203	Ch
	222	Be
	229	Ma
	233	S.
	237	Wi
	250	L.
	254	Da
	265	Isa
	274	Le
	276	Wi
	277	Jar
	279	J.
	287	He
	290	Te
	300	Jar
	314	Jo

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No.

INDI
No.

IOW
No.

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KEN

LOU

STATE		NAME	AGE	RACE	DATE
MAINE					
MARYLAND					
No.	2	Carroll Gibson	18	B	1925
	5	Ottie Simmons	19	B	1927
	8	Alfred Simms	19	B	1927
	49	John Lampkin	19	B	1943
	63	Charles Lee Carmen	19	B	1947
	65	Weldon Jones, Jr.	18	B	1947
	78	Leonard M. Shockey	17	B	1959
MASSACHUSETTS					
No.	9	Leong Gong	19	—	1909
	11	Andrei Ipson	19	—	1911
	54	Paul Giacomazza	19	—	1942
	61	Donald Millard	19	—	1943
MISSISSIPPI					
No.	6	Walter Johnson	19	B	1955
MISSOURI					
NEBRASKA					
NEVADA					
No.	18	Raymond Plunkett	17	—	1944
	22	David Blackwell	18	—	1949
NEW HAMPSHIRE					

STATE	NAME	AGE	RACE	DAT
NEW JERSEY				
No. 35	Stefano Ruggierri	17	W	191
38	Michael Sparks	16	B	191
66	William Battles	19	B	192
NEW MEXICO				
NEW YORK				
Auburn				
No. 54	David Dunn	19	W	191
Clinton				
Sing Sing				
No. 141	Stanley J. Hillstein	19	W	191
165	Elmer Hyatt	19	W	192
223	John Rye	19	W	192
242	Sam Wing	19	Chin	192
245	John Garuglia	19	W	192
246	Cosima Brescie	19	W	192
279	Israel Fisher	19	W	192
295	James Bolger	19	W	192
302	Fred Carmosino	19	W	192
306	Herbert Johnson	19	B	192
313	Francis Crowley	19	W	192
331	Thomas Carpenter	19	B	192
332	Charles Bates	19	B	192
372	Stanley Pluzdrak	17	W	192
403	Charles Ham	19	B	192
404	Frederick Fowler	18	B	192
424	Vincente Forte	19	W	192
426	Dominick Guaraglia	18	W	192
479	Lawrence Edwards	18	B	192

STATE	NAME	AGE	RACE	DA
489	Benitez Dejesus	18	B	19
490	Edward Height	17	W	19
491	William Diaz	18	B	19
506	Gordon Cooke	19	B	19
510	Lew York Bing	18	Chin	19
530	Jauvham Jackson	18	B	19
536	Harris Gray	18	B	19
537	Louis Smiley	19	B	19
553	Harley LaMarr	19	I	19
574	Allen Henry	19	B	19
580	Henry Matthews	18	W	19
587	William Byers	19	W	19
588	Norman Roye	17	B	19

NORTH CAROLINA

No. 27	Willie Black	18	B	19
112	Wilson Autrey	19	B	19
114	J. W. Ballard	17	B	19
119	Dudlay Moore	19	B	19
157	Caesar Miller	18	B	19
158	Arthur Gosnell	18	W	19
162	Allen Foster	19	W	19
164	William Long	19	B	19
168	Ed Hester	19	W	19
184	Robert Glenn Brown	18	B	19
193	Leroy McNeill	17	B	19
194	William Perry	18	B	19
209	L. J. Jefferson	17	B	19
227	Willie Richardson	19	B	19
232	Nathaniel Bryant	17	B	19
254	Otis Harris	17	B	19
260	John Henry Lee	19	B	19
272	Wayman Grainger	19	B	19

NORTH DAKOTA

STATE		NAME	AGE	RA
OHIO				
No.	8	Otto Lueth	16	V
	19	William Whaley	18	I
	20	Charles Hart	18	V
	25	William Taylor	18	I
	29	William Haas	17	V
	40	Carl Berg	19	V
	51	Herman Hamilton	19	I
	73	Hurley Beard	18	V
	82	Frank Mazzard	19	V
	108	Samuel Purpera	17	V
	131	Alex Kuszik	19	V
	147	William Clark	19	V
	151	Emmanuel Ross	17	I
	160	Floyd Hewitt	16	V
	161	John Coverson	18	I
	163	W. H. Wilson	19	I
	164	James Coleman	18	I
	174	Lee Akers	17	V
	188	Blanton Ralls	19	I
	204	Joseph Murphy	18	I
	222	Theo Blackam	19	I
	235	Thomas Williams	19	
	252	Pang Young	18	C
	265	Erwin Griffin	19	
	267	Louis Hand	17	
	273	Henry Hagert	19	
	288	Donald Frohner	16	
	295	Asbell Adams	19	
	313	Lon Stevenson	19	
	318	Louis A. Angel	19	
	325	Bernard Schreiber	19	

OKLAHOMA				
No.	40	George Oliver	18	
	56	Charlie Sands	19	

STATE	NAME	AGE	R
OREGON			
	_____		
PENNSYLVANIA			
	_____		
SOUTH CAROLINA			
No. 178	George Stimney	14	
	_____		
SOUTH DAKOTA			
	_____		
TENNESSEE			
	_____		
TEXAS			
	_____		
UTAH			
	_____		
VERMONT			
No. 5	Henry Welcome	18	
	_____		
VIRGINIA			
No. 2	Winston Green	17	
5	Benjamin Gilbert	19	
6	Arthrlius Christian (sic)	17	
20	Thurman Spinher	18	
31	John Eccles	17	
34	Harry Sitlington	17	
42	Byrd Jackson	18	
43	Virginia Christian	17	
65	Willie Puryear	19	

STATE	NAME
68	Arthur Neale
73	Lem Jones
78	Sherman Stanfield
79	Percy Ellis
82	Milton Maloy
83	Richard Green
84	Clifford Hickens
86	Minzer Harris
94	Guy Nixon
95	Tolson Bailey
103	Raleigh Haskins
118	Friz Lewis
119	Otto Clear
124	Rodney Hoke
140	James Washington
147	Alphonso Bellamy
149	Calvin Groome
150	Sam Pannell
178	Charles Johnson
194	Thomas Harrison

WASHINGTON

No.	6	William White
	33	Walter Dubuc
	47	Earl Talbott
	48	Roy Wright

WEST VIRGINIA

STATE NAME

WYOMING

---

*W. BOWERS, EXECUTIONS IN AMERIC

W	=	White
B	=	Black
I	=	Indian
Chin	=	Chinese
—	=	Not reported

All numbers correspond to the numbers used
Teeters — Zibulka inventory.

APPEN

CHANGES OVER TIME
THEMES RECURRING IN GO
JUSTIFYING COMMUTATIO
FOR MURDERERS AND RAP

Themes in Commutation Statements
Responsible officials and/or jury urged commutation
Community urged commutation
Age of offender or his underprivileged status
Victim contributed to crime or was disreputable
Mental condition of offender
Crime was not premeditated
Evidence does not justify death penalty or is of doubtful nature
Number of cases

*Johnson, *Selective Factors in*
FORCES 165, 168 Table 3 (195

APPEN

PERSONS UNDER A
OF OFFENSE AWA
AS OF M

Age	Name
15	Todd Ice
16	Jose High
16	Johnny Johnson
16	Joseph Marshall
16	Reginald Smith
16	Monty Eddings
17	Frank Valencia
17	Willie Simpson
17	Sam Gibson
17	Andrew Legare
17	Joseph Brown
17	Dalton Prejean
17*	John Boutwell
17	James Roach
17	Rudolph Tyner
17	Billie Battie
17	Harvey Earvin
18	Jose Ceja
18	Raymond Tyson
18	Michael Leach
18	Lenson Hargrave
18	Ronald Jackson
18	Roy McKennon
18	Terry Goodwin
18	David Jarrell
18	John Young
18	Alphonso Morgan
18	Willie Reddix
18	Larry Jones

18*	Charles Gid
19	Ricky Tyson
19	Charles Nea
19	Douglas Sta
19	Earl Jackson
19	Marvin Wal
19	Jesse Rutled
19	Robert Bufo
19	Anthony Pe
19	Frank Smith
19	Donald Tho
19	Nathen Brov
19	Freddie Dav
19	Eugene Tho
19	Roger Collir
19	Carl Isaacs
19	Tony Amad
19	David Peek
19	Kenneth Da
19	Michael Ser
19	Daniel Bake
19	Jerry Sprous
19	Juan Caball
19	Luis Ruiz
19	James Cope
19	Lawrence J
19	Michael Pin
19	Larry Dean
19	Robert Glic
19	James Anth
19	Richard Sin
19	John Henry
19	Stanley Bur
19	William Ar

*Age when received at

W = White
B = Black
H = Hispanic
NA = Native Amer

CORR

In the Supreme

O

MO

STA

On W
Oklahoma

BRIEF

August, 1981

1. Whet
state to impo
sixteen years
ment officer v
that the defen
adult for his

2. Whet
view the conte
refused to co
contention wa
appellate cour
Writ of Certio

QUE
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JURI
CONS
PR
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SUM
ARG
I.

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II. The sentence of death imposed upon a person who was sixteen years old at the time of the commission of the murder was not disproportionate to the crime where the evidence revealed that the crime was an intentional murder of a law enforcement officer 45

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No. 80-5727

In the
Supreme Court of the U

OCTOBER TERM, 1

MONTY LEE EDD
Petitioner,

VERSUS

STATE OF OKLA
Respondent.

On Writ of Certiorari
Oklahoma Court of Crimi

BRIEF OF RESPO

OPINIONS BEL

The opinion of the Oklahoma
peals is reported at 616 P.2d 1159 (
211). The opinion of the District C
(A. 4-5 and 186-191) is unreported.

The opinion of the Oklahoma
peals affirming the order of the ju
the petitioner to stand trial as an a
P.2d 1340 (Okl. Cr. 1978), *cert. den*
order of certification of the juveni
unreported.

JURIS

The judgment of the O
peals was entered on Marc
hearing was denied on Sep
for Certiorari was filed on
diction of this Court rests

**CONSTITUTIONA
PROVISIO**

The Eighth Amendmer
tution provides as follows:

> "Excessive bail sh
> sive fines imposed, nor
> inflicted."

The Fourteenth Amend
stitution provides in pertin

> "All persons born
> States, and subject t
> citizens of the United
> they reside. No State
> which shall abridge t
> citizens of the United
> prive any person of li
> due process of law; no
> jurisdiction the equal

This case also involve
State of Oklahoma which
this brief: OKLA. STAT. AN
1974); OKLA. STAT. ANN. tit.
701.12, and 701.13 (West S

STATEMENT

On April 4, 1977, the p
sixteen-year-old white male
his fourteen-year-old friend
Gary Molt that he was runn
Molt to join him (A. 58). T
was leaving home because h
Vol. II, 064). Molt agreed t
turned to the Eddings' house
the petitioner was living w
mother (A. 50).

The petitioner sawed
shotgun in the basement of
Tr. Vol. II, 067). The petiti
gun and two other weapon
and a 30-30 rifle, into a red
C. Tr. Vol. II, 068). The
could use the guns if they

The two went from
where the petitioner picked
Rhonda Eddings, and her
Clevenger, at the high scho
left Joplin, Missouri, with t
wagen, Gary Molt sitting n
of the front seat and the sa
them near the emergency
were placed behind the rea
(A. 64) and the two girls

The group hea
souri and entering
entering Oklahoma
Creek County, Okl
up a hitchhiker (A
got into the passen
Gary Molt moved
(A. 51-52).

Shortly after
group stopped at a
state 44 (A. 52). A
Patrol vehicle park

The group rest
petitioner at the wh
on Interstate 44. A
the petitioner dropp
of the car and whe
momentarily swerv
and into a ditch
Johnson's watched
reported the violat
Crabtree, who was
185). Trooper Crab
incident (A. 185).

Trooper Crabt
thirteen (13) miles
Eddings observed
told the petitioner,
to Gary Molt, the
"mother fucking p

blow him away" (
the petitioner "w
(A. 34). Molt noti
enough to kill" (A
light for the car t

When the troo
the sawed-off shot
fied that Molt tw
(C. Tr. Vol. II, 03
conceal the gun b
from reaching it (
petitioner reached
(A. 90; C. Tr. Vol
ing off onto the sl
with one shell (A
he "was going to
sponse (A. 90).

After stoppin
of his car and mot
driver's side of th
rolled down his w
approaching office
Molt testified tha
trigger he told pet
and the others we
He said that Terry
"told him not to c
proximately six t

---

[1] Terry Clevenge
words were "If the fu

fired one
Trooper C
ground, bl

The p
ing the of
Terry Cle
(A. 91). T
rate of spe
off shotgu
ordered th
dow, whic

The p
have shot
94). He w
asked if h
know (A.

Motor
the turnpi
the scene
quiess saw
to alert la
(A. 46). T
bystander
pursue th
at speeds

Highw
motorist's
within mi
Crabtree
(A. 73). T

and atter
(A. 73).
Volkswag
forcemen
wagen ar
Vol. II, 0
occupant

The
were late
The sawe
was cock
tioner w
sheriff's c
to arrive
the polic
would sh

Troo
titioner c
Creek C
plaining
that the
the petit
actions i
tioner "
have sho
don't tu

On
titioner
Oklahom
The Dist
examine

tim (C. Tr. Vol. II, 023). Hoffman testified that t
of death was perforation of the heart due to a sin
gun wound in the chest (C. Tr. Vol. II, 025). H
that plastic wadding material generally found in a
shell was recovered from within the heart itself, a
numerous pellets (C. Tr. Vol. II, 026). The medic
iner testified that a .410 shotgun shell had entere
Crabtree's chest and that he died not instantly, b
a matter of minutes (C. Tr. Vol. II, 026).

The State next called as witnesses the other
cupants present in the petitioner's car when he sho
Crabtree. These persons testified to the events sur
the murder of the trooper. They also testified co
petitioner's demeanor and state of sobriety befor
and after the murder.

Terry Clevenger stated that the petitioner did
very much and did not seem upset (C. Tr. Vol
Gary Molt testified that there was no difference
tioner's appearance the day of the murder and
he appeared in court and that he did not observe
take any pills or drink any intoxicants (C. Tr. Vo
He stated that petitioner engaged in normal conv
with the others (C. Tr. Vol. II, 70).

Rhonda Eddings also testified that her brot
pearance was no different than it had been in
(C. Tr. Vol. II, 74, 86) and that she did not see
tioner or anyone else consume any drugs or alcoh

nothing unusual about his behavior prior to th
(C. Tr. Vol. II, 104). Thomas stated that after
ing, petitioner was panicky and was mumbling
gibly (C. Tr. Vol. II, 102).

Highway Patrol Trooper Joe Inman and Tro
neth Bailes testified concerning the threats ma
petitioner regarding other law enforcement offi
he was in custody in the Creek County Jail (C.
106-127).

The court then ordered that the petitione
mitted for mental observation at Eastern State
Vinita, Oklahoma (C. Tr. Vol. II, 129). This was
the concurrence of his attorney (C. Tr. Vol. II,

The petitioner's certification hearing resum
6, 1977. Stephen Dorn, the petitioner's juvenil
Missouri, then testified for the State concernin
tioner's past legal and behavioral problems. I
that the petitioner had been adjudicated as a
previously after committing four burglaries, b
entering and auto tampering (C. Tr. Vol. II
After being placed on probation, during whi
sulted with a psychologist (C. Tr. Vol. III,
petitioner was then charged in Juvenile Cour
box vandalism and with Assault with Intent t
Harm (C. Tr. Vol. III, 023). The petitioner w
to a group home and participated in a group
program there, consulting weekly with a psyc
Tr. Vol. III, 024-025). Later, while he was still

Vol. III, 027). On March 1, 1977, appro
prior to the murder of Trooper Crabtre
that petitioner had violated his probati
to Oklahoma where he was picked up
(C. Tr. Vol. III, 028).

Dorn further stated that the petitio
had a decreasing willingness to cooper
Tr. Vol. III, 039). He stated, ". . . as t
first got progressively worse. He was
from what we had to offer through th
Tr. Vol. III, 042). When asked on cross
petitioner's mental ability, Dorn not
sharp" (C. Tr. Vol. III, 061). He furth
petitioner was fearful of his father b
Vol. III, 053). Dorn concluded that the
Missouri had failed in its attempt to r
tioner (C. Tr. Vol. III, 070), stating tha
thing we knew to do" (C. Tr. Vol. III,

Dr. R. D. Garcia, the chief forer
Eastern State Hospital in Oklahoma, fo
normalities or neurological deficiencie
(C. Tr. Vol. IV, 076). He testified th
found that the petitioner knew the diffe
and wrong, had no remorse or grief ov
not amenable to rehabilitation and h
sociopathic personality (C. Tr. Vol. IV,
cia explained that he could not treat su
is characterized by conduct against soc
displays callousness, selfishness, immat

Dr. Garcia testified that petitioner was
not mentally ill . . . not insane" (C. Tr.

Dr. H. Brent Dietsche, a clinical
same hospital, agreed that the petitione
personality (C. Tr. Vol. IV, 031). Dr
stated that petitioner had the "intellectu
intellectual maturity," to realize and u
ference between right and wrong (C. Tr
Dietsche testified that petitioner had a
was "[j]ust about the range you usuall
personality" (C. Tr. Vol. IV, 31).

Don McAllister, an intake worker f
ment of Social and Rehabilitative Serv
study of the petitioner for certification,
was insufficient time to rehabilitate th
juvenile system (C. Tr. Vol. IV, 049).
a social worker with the same depart
concerning available juvenile facilities
Vol. IV, 55-84).

In his defense, petitioner called D
behavioral scientist, who interviewed
Creek County Jail (C. Tr. Vol. IV, 092
troubled home situation that the teena
(C. Tr. Vol. IV, 087). He testified th
there was such a thing as a sixteen-yea
not be rehabilitated and stated that
is no such thing as a bad boy, "just a
Vol. IV, 108).

(C. Tr. Vol. IV, 142-173). He stated never accepted his parents' divorce "certainly not disagree" with the op the petitioner had an antisocial per 6, 15). He testified that the petitio he did and "feels responsible for h 015). Dr. Gagliano further stated potentially dangerous to others as (C. Tr. Vol. V, 023). Dr. Gagliano evidence of violence in petitioner's Dr. Gagliano conceded on cross-exa that the petitioner knew right fro V, 022).

Subsequently, an order certi stand trial as an adult was entere Tr. Vol. VI, 003; O.R. 1-5). That d the Oklahoma Court of Criminal A *In the Matter of M. E.*, 584 P.2d 1 February 22, 1978. This Court deni tiorari in *Eddings* v. *Oklahoma*, 43

On May 8, 1978, the petitioner *contendere* in the District Court of Tr. 2-36). The sentencing proceedin and 17th, 1978, in the District Court State again presented testimony of as well as the testimony of Johnny witnessed the group throwing the

The defense presented testimon
Stephen Dorn (A. 104-130), Dr. H.
144), psychologist Richard Rettig
chiatrist Anthony Gagliano (A. 165
testified at the certification hearing

Dorn recited the petitioner's p
failure of the juvenile rehabilitative
the petitioner's family background.
titioner stayed with his mother u
fourteen years old (A. 109). He wa
due to the inability of his mother
The petitioner's father was more
tioner would rebel against the rul
father apparently was inconsistent
times resorting to physical conta
stated that in his opinion, the pe
home because of the harsh discipli
(A. 120). Dorn testified that the
tional problem that he knew of (A
logical testing during the time th
group home revealed that he was
(A. 124).

Dr. Dietsche again testified co
lating to the petitioner's mental st
fied that the petitioner tested high
and that in his opinion, the peti
personality (A. 136-137). He state
the intelligence of an adult" (A.

Dr. Rettig also testified a
background on the petitioner
as "antisocial" (A. 149). Re
pathic condition was develop
ingness" in his childhood (A
he stated that the petitioner
abuse (A. 160).

Dr. Gagliano also testifie
background. Gagliano state
antisocial disorder and never
responsibility (A. 171). Dr.
crazy. There is a sense of r
right and wrong" (A. 171). G
liano reiterated that "[t]here
boy is not crazy" (A. 174). Ga
the petitioner would not kill
was not safe and that fifteen
therapy would be required t

At the close of the hearin
sufficient evidence existed b
support the first aggravating
was heinous, atrocious or cru
"I find one part of the partic
with beyond a reasonable d
designed to inflict a high deg
indifference to the rights of P
The court further found tha
doubt that the crime was c

continuing threat to society
petitioner's age to be the o
it did not sufficiently "sc
stances that were found b
188-189). Accordingly, th
death (A. 189).

SUMMARY

Oklahoma has enacte
imposition of the death p
sixteen years old at the t
tentional murder. There a
which have statutes permi
penalty under those circu
tioner admits that the co
his position that a person
the death penalty. The
Court, rather than the sta
ological age at which a pe
alty has no support in a
theories proscribing cruel
Court has in the past refu
doctrine of criminal respo
U.S. 514 (1968), and Okl
of deciding at what point
maturity at which he sho
ble for actions warrantin

and *Lockett* v. *Ohi*
the age of the pers
used in determinin
alty in a particular

In view of the
that he is the victi
punishment, a dispr
ished criminally fo
that a defendant ha
bility to be treated
should not be overt
not have found bey
to be executed had
ability as defined b

The petitioner
tion of the death
stricken as being "
portionate, irrespec
an absolutely prec
Oklahoma's positio
lated murder of a
highways and that
tification and sente
mining that this ind
he should be held
ceive the death pe

The petitioner
Court of Criminal
the sentencing co
"consider the fact
constituted error i
Ohio, 438 U.S. 586
the youth of the pe
the remark, when
evidence presented
plain error.

**A STATE MAY
DEATH PENAL
TEEN YEARS
SION OF THE
THE DETERMI
SUPPORTED I
TIONER INTE
OF MURDER.**

**A. The objective
states preclud
is attempting
ment upon th**

The petitione
to adopt as an as

Court to s
a defendan
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for his act.

With r
Amendmen
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Furthermo
Justice Wh

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[2] ALA.
ARIZ. CONS
ARK. STAT.
(Supp. 197
CONN. GEN
CODE ANN.
ANN. §§ 3
GA. CODE A
CODE §§ 1
31-6-2-4, 3
§§ 208.17
13:1570, 1
§ 3-804(d
(Supp. 198
1980); M
MONT. REV
(1979); N
NEV. REV.
GEN. STAT
ANN. tit.
STAT. ANN

ment officer. See *(Harry) Roberts* v. *Louisiana*, 4
633, 636 (1977). Furthermore, petitioner does not
the manner in which Oklahoma has chosen to exec
titioner, death by a lethal injection of drugs. OKL
ANN. tit. 22, § 1014 (West Supp. 1980). Cf. *Wilke*
Utah, 99 U.S. 130 (1879); *In re Kemmler*, 136 U
(1890).

With regard to the second classification, petitior
contend that the imposition of the death penalty
present case violates disproportionality principles a
argument constitutes Proposition II of his brief.

Finally, the imposition of the death penalty upo
son who was sixteen years old does not fit within t
scription of *Robinson* v. *California*, 370 U.S. 660
which prohibited the states from punishing an in
based upon his status or condition. Petitioner's ar
occasionally seems to fall within this principle s
relies heavily on his juvenile status to protect hi
capital punishment, but petitioner is not being puni
Oklahoma for being a juvenile. He is being punis
the act of intentionally killing a law enforcement

The imposition of the death penalty in the pres
also does not fall within any other Eighth Ame
theory which has been considered by this Court. *L*
ex rel. Francis v. *Resweber*, 329 U.S. 459 (1947)
execution after first attempt failed); *Caritavito* v. *Ca*
357 U.S. 549 (1958), and *Solesbee* v. *Balkcom*, 33
(1950) (execution of person alleged to be prese

This Court has been reluctant to impose inflex
on the states' criminal justice procedures. See *
Wingo, 407 U.S. 514, 522-25 (1972). With regard
Amendment judgments, this Court has refused t
engaged in "the basic line-drawing process tha
eminently the province of the legislature. . . .". *R*
Estelle, supra, 445 U.S. at 275. In *Rummel*, Justi
quist set forth the reasons why the Court was abl
the line in *Coker* v. *Georgia*, supra, stating:

> "Since Coker involved the imposition
> punishment for the rape of an adult fe
> Court could draw a 'bright line' between th
> ment of death and the various other permuta
> commutations of punishments short of that
> sanction. For the reasons stated by Mr. Just
> art in Furman, see supra, at 272, 63 L Ed 2
> this line was considerably clearer than wou
> constitutional distinction between one term
> and a shorter or longer term of years." 445 U

Against the common-law precedent, the arra
which have chosen the age of sixteen or below
ultimate criminal responsibility attaches, and th
of a "bright line" with which to guide this C
Coker v. *Georgia*, supra, the petitioner asks this
raise this minimum age to eighteen, and bases his
essentially upon "human decency" principles. A
foundation for his position, the petitioner sets for
ity such as the Twenty-Sixth Amendment to t
States Constitution, statutes relating to marriag

power as a state to determine the appropri
inal responsibility for such an act as co
petitioner, is not, and should not, be limi
thority and that previous decisions of t
preting the Eighth Amendment allow O
legislative and judicial judgment.

Nothing in the wording of the Twent
ment or its legislative history remotely s
states of this country surrendered their ri
the appropri‘e age for criminal responsibi
tion of that Amendment. If anything, the l
of this Amendment reflects a recognition
maturity of young adults in American soci
for supportive of Oklahoma's position in
that the states should have the flexibility
logical developments and the effect of
criminal justice systems.

In her testimony before the Senate S
Constitutional Amendments of the Senate
mittee, Dr. Margaret Mead, who testified
Twenty-Sixth Amendment, stated that toda
"are not only the best educated generati
ever had, and the segment of the populat
educated than any other group, but also
mature than young people in the past."
26, 92nd Cong., 1st Sess. (1971), reprinte
Code Cong. and Ad. News 931, 934. Dr.
also noted that "[t]here is no magic to th

excerpt from the floor debate of Repres
Poff, one of the primary spokesmen in fav
ment during floor debate in the House,

> "Moreover, the proposed amendme
> lish that age qualifications for votin
> 18. It does ban age qualifications ab
> It does not ban age qualifications be
> Thus, a State legislature could lowe
> for elections held within the State to
> And so long as the Supreme Court's
> gon versus Mitchell stands, the Con
> the voting age for so-called Federa
> age below 18." 117 Cong. Rec. 7535

It would be an ironic application of
Amendment to hold that passage of the
locked the states in at the age of eighte
the determination of the age of criminal
leaves the states free to lower their v
choose.

With regard to the recitation of the
the treaties referred to, and the laws of
garding the death penalty, the State c
response than to quote the statement
in *McGautha* v. *California,* 402 U.S. 18
in *Lockett* v. *Ohio,* 438 U.S. 586, 632-33
J., concurring in part and dissenting in

> " It may well be, as the Ameri
> and the National Commission on

these cases, does not guarantee
are the best of all worlds, or
most enlightend ideas of stude
ence of criminology, or even t
to the individual predilections
Court. See Spencer v Texas,
2d 606, 87 S Ct 648, 40 Ohio Op
Constitution requires no more th
conducted and that guaranteed
scrupulously respected." 402 U

This Court has repeatedly reco
not act as judges as we might as
Georgia, supra, 428 U.S. at 175 (Stew
ion), and that the Constitution has
"roving commission" to impose up
notion of enlightened policy. *Rumm*
U.S. at 285 (Stewart, J., concurring)
of individual Justices should not b
Amendment judgments. *Rhodes* v. C
49 U.S.L.W. 4677, 4679 (U.S. June
Georgia, supra, 408 U.S. at 405-406
ing). Additionally, this Court has
decision by the Supreme Court "tha
is impermissible cannot be reverse
tional amendment." *Gregg* v. *Gorgia*

In *Barker* v. *Wingo*, supra, 407
Court rejected a suggestion that it
period within which a defendant m
Noting that such a rule was recom
can Bar Association, the Court stat

than in the adjudicative proce
confine our efforts. We do n
rules for the States, except v
Constitution. We find no const
ing that the speedy trial right
a specific number of days or
course, are free to prescribe a
sistent with constitutional stan
must be less precise". 407 U.

There likewise is no constitutional
Court can rely in selecting the ch
teen as the lowest age at which a
death penalty.

**B. The legislature of a state is th
establishing guidelines for dete
sponsibility and accountability a
supportive of such a finding in
State should be allowed to imp
for an act of intentional murde**

The complexities involving t
sanctions for juveniles also weigh h
setting a fixed line beneath which
in determining what is the prope
death penalty in a particular case.
tween maturity levels of individu
viously noted by Justice Powell i
Michael C., 442 U.S. 707 (1979), v

"Minors who become embr
from the very young up to t

> than an adult. As the C
> [citation omitted], the
> be exercised in a partic
> include the minor's age
> vironment, education, e
> and, of course, any prio
> U.S. at 734, n.4.

The adoption of the "tota
regarding the admissibility o
majority in *Fare* is in itself a
the differing types of juvenile
front. The majority in *Fare* s
imposing rigid restraints on
with an experienced older juv
record who knowingly and i
Amendment rights and volu
tion." 442 U.S. at 725-26.

In the *President's Comm*
and Administration of Justice
Delinquency and Youth Crim

> ". . . It is recognized
> juvenile courts are ha
> while some adults older
> level are emotionally a
> mature individuals. . .

and later,

> "No chronological ag
> cal or entirely homoge

judgment with regard to cert
is more supportive of the S
required the states to establi
can demonstrate that she i
enough to make the abortio
the holding in *Fare* v. *Mich*
sixteen-year-old juvenile wh
permission to see his probati
to a murder), supports the co
be given the freedom to mak
sixteen-year-old persons ar
criminally responsible for th
and that the death penalty n
ment in a particular case.

The existence of certi
statutes in various states, is
necessity of making individ
criminal responsibility in ca
This Court has noted that
jurisdictions permits transfe
Jones, 421 U.S. 519, 535 (19
linquency Act, 18 U.S.C. §
provision for sixteen and se
U.S.C. § 5032. Certificatio
chronological age of an offe
and arbitrary line to draw
criminal behavior.

numerous instances wh
sensitive to the age c
reduced the death sent
titioner, p. 28, n.52).
162, 273 N.E.2d 829 (1
and seventeen-year-old
records); *Commonwea*
241 (1959) (modifying
of circumstances surr
background); *Commo*
A.2d 44 (1961) (same
"three young men" a
constitute a barrier to
Ridge v. *State*, 28 Okl.
modified the death sen

Petitioner also im
young persons require
imposed on any. How
Howard v. *Fleming*,
leniency in one case d
ishment in another ca
Georgia, supra, 428 U.

While the petition
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sons is accelerating at

[4] The F.B.I. Uniform C

that this Court sho
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that under a repu
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wide discretion in
the citizens who l
dictions. As this
432 U.S. 197:

> "It goes wi
> with crime i
> than it is of
> fornia, 347 U
> (1954) (plur
> lightly const
> the administ
> 432 U.S. at 2

The setting b
logical age for w
penalty would for
ognition that the a
Supreme Court ma
not be made in th
Georgia, supra, 42

Other factors
lative bodies to re
American society.

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[4] (Continued)

Judiciary of th
S. 114, which
capital punishr
1st Sess., 127
most notable a
of the death pe
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> but are
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> of age
> p. B-4)

Therefore, if e
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432 U.S. 19
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U.S. 660 (19

[5] (Continued

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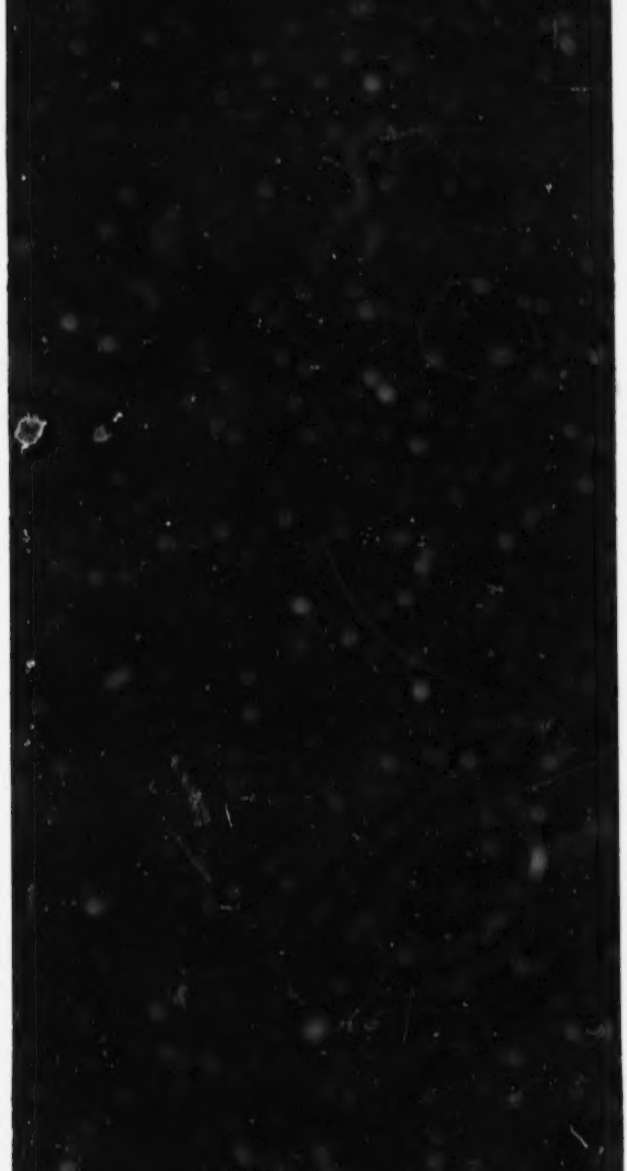

to the stopping of the petitioner by the trooper, the p
tioner stated, "[i]f the fucking pig hassles me I'll sh
him" (A. 96). The evidence is uncontroverted that p
tioner was not intoxicated or on drugs at the time of
murder. Even petitioner's own psychiatrists made no cl
that he was insane. After being stopped, the petitio
killed the trooper with a blast to the heart (A. 21) a
the others in the car had moved the guns away from
(A. 55, 65) and attempted to dissuade him from shoo
the trooper (A. 55). After the shooting, petitioner dr
down the interstate highway at a high rate of speed, ej
ing the spent shell, apparently reloading and cocking
gun (A. 75; C. Tr. Vol. II, 117), and then throwing it
the other guns out the window (A. 34). After being s
ped, petitioner followed directions to lie on the ground
Tr. Vol. II, p. 61). The petitioner never expressed rem
for the killing (C. Tr. Vol. III, 079) and made threats
cerning law enforcement officers on two other occas
(A. 77, 82).

Furthermore, Oklahoma made a careful and thor
determination that the petitioner was accountable fo
intentional act of murder. At the certification hearin
other occupants of the vehicle from which petitioner
the fatal shot testified fully concerning the act itself
the petitioner's attitude and conduct before and afte
murder. The petitioner's juvenile officer from Missour
tified concerning petitioner's prior juvenile record (w
included a charge for Assault with Intent to do B

sonally examined petitioner, testified that he k
difference between right and wrong (C. Tr. Vol.
A clinical psychologist testified that petitioner ha
tellectual maturity to understand what he had
Tr. Vol. IV, 32-33). The petitioner himself calle
ologist from a local university and a psychiatri
upon this testimony, the juvenile court certified
tioner to stand trial as an adult and filed a part
order specifying the reasons in support of that
(O.R. 1-5).

Under the Oklahoma law which was in effe
time, 1974 OKLA. SESS. LAWS 570, ch. 272, § 2[7] (
A), the juvenile judge was required to consider
guidelines in determining whether a juvenile s
certified to stand trial as an adult. The judge was
to "certify such child capable of knowing right fro
and to be held accountable for his acts . . .".
vision was complied with in the present case and
nile judge conducted an extensive hearing and
cific reason for his ruling that the petitioner shou
accountable for his acts.

The petitioner entered a plea of *nolo contend*
charge of Murder in the First Degree and an
sentencing hearing was conducted in which he w
to introduce all evidence he presented, including
mentioned juvenile officer, clinical psychologist
chiatrist.

In its opinion affirming petitioner's convict
lahoma Court of Criminal Appeals held that
dence tends to show that [the petitioner] knew
ence between right and wrong at the time h
trigger, and that is the test of criminal resp
this State. *Gonzales* v. *State*, Okl. Cr., 388 P.2d
(A. 207-208).

The rule of criminal responsibility in Ok
also set forth in *Hair* v. *State*, 532 P.2d 72,
1975), which noted that the "well settled" tes
responsibility for committing an act which is
be a crime is fixed at the point where the de
mental capacity to distinguish between right a
applies to a particular act, and to understan
and consequences of such an act."

The evidence presented was more than
support the state court's decision that the p
accountable for his actions and that he acted
aforethought." In *Jackson* v. *Virginia*, supra,
(1979), this Court held that in federal habeas
ceedings, federal courts were required to re
court conviction to determine whether, when
light most favorable to the prosecution, a ratio
could have found the defendant guilty beyond
doubt under the applicable state law. The
Jackson was convicted of first degree murde
ginia state law. The factual issue in the case

premeditation." 443 U.S. at 324. The C
jected the suggestion that the standard
invite intrusions upon the power of th
criminal offenses and stated:

> "Quite to the contrary, the stan
> plied with explicit reference to th
> ments of the criminal offense as def
> 443 U.S. at 324, n.16.

See also *Moore* v. *Duckworth*, 443 U.S.
this Court held that the Indiana state la
determination whether the evidence wa
the *Jackson* v. *Virginia*, supra, standar

The record in this case fully support
ings that the petitioner was accountable
adult. The deference which this Court
decisions regarding the substantive crim
intent should apply to a state finding c
which, if anything, is a more sophistic
that regarding intent. While intent gene
accused's mental state at the time of the
crime, the "accountability" of a person
actions may involve the weighing of s
physical development, prior criminal rec
vironment. Indeed, the eight (8) statuto
the juvenile judge in the present case w
sider demonstrate the complexity of the

The State urges this Court to adopt
ginia, supra, standard for reviewing its f

inally responsible for his actions sho
a finding that, under applicable state
record in the light most favorable to
tional factfinder could not have found
beyond a reasonable doubt.

The State submits that the dete
ability falls within the dicta of Mr. Ju
v. *Chapman*, ... U.S. ....., 49 U.S.L.W.
15, 1981), who stated, in the context
courts' responsibility for applying th
to state prison conditions, as follows

> "In discharging this oversigh
> ever, courts cannot assume that
> prison officials are insensitive t
> the Constitution or to the perple
> lems of how best to achieve t
> function in the criminal justic
> justly, to deter future crime, an
> persons to society with an imp
> useful, law-abiding citizens."

The petitioner in effect urges the
"perplexing sociological problems"
supra) of criminal accountability
line" (*Rummel* v. *Estelle*, supra, 44
age of eighteen and would have thi
Constitution commands that persons
time of the commission of the crime
mune from the penalty of death. T
simple solution, though not necessa
complex subject.

chronological age of criminal re
requiring over half of the states t
mum they have set. However,
moved away from the heavy relia
such as were used in *In re Gaul*
Streib, *From Gault to Fare and S*
preme Court Reliance on Delinq
dine L. Rev. 801 (1980). The de
studies in determining constitut
tent with the concept that Eight
"should be informed by objectiv
possible extent." *Coker* v. *Georg*
Reliance on sociological data is a
subjective viewpoint, since socio
any number of perspectives. In
this Court noted that the fact th
have disagreements with regard
inforced the Court's conviction th
toward lighter, discretionary sen
and its sustaining force in the le
eral courts." 445 U.S. at 283, 28

The State contends that soc
productive when presented to a
sideration in formulating an ap
ward crime, delinqency, punishm
society. The recognition that di
serve differing treatment by th

C. The age of a defendant a crime in a capital case sh of a mitigating circumsta

In a capital case in Okl to present evidence as to "a OKLA. STAT. ANN. tit. 21 § 70 fore the sentence of death is find the existence of one stances beyond a reasonable outweighed by one or more m STAT. ANN. tit. 21 § 701.11 (tencing is by jury, the vot STAT. ANN. tit. 21, § 701.11 (W 617 P.2d 588 (Okl. Cr. 1980)

In the present case, the found the age of petitioner t but that it did not outwei cumstances which were fou sonable doubt (A. 187-188).

This Court has never sidered to be more than a *Woodson* v. *North Carolina*, required the states to allow sider "the character and rec and the circumstances of th at 636. In *(Harry) Roberts* 633 (1977), the Court appli

". . . Circumsta
fender, the absenc
fluence of drugs, a
turbance, and eve
which the offende
moral justification
of mitigating facts
a peace officer and
other jurisdictions.

In *Lockett* v. *Ohio*,
validated an Ohio law w
considering age to be a
at 604. This is as far as
eration of the proper re
offender and the imposi
petitioner in his brief c
that the age of a defend
imposing punishment (
Gregg v. *Georgia*, supra,
that a reading of that o
not support such a conte
or *Lockett* suggests tha
than any other mitigatin
sented by a defendant.

In *Bell* v. *Ohio*, 438
was sixteen years old a
the death penalty. This
to its holding in *Locket*

was no suggestion i
be given any more c
factor.

The age of a pe
which is a "suspect
ysis of Fourteenth
Board of Retirement
v. *Bradley*, 440 U.S
supra, 408 U.S. 238,

Nothing in the
son's chronological
factor for the sente
posing sentence. As
with the sentencer's
making the decisio
death, and if the ev
defendant is accou
law, the sentence s

**THE SENTENC
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OF THE COM
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EVIDENCE RE
INTENTIONAL
OFFICER.**

In his second
imposition of the
constitute an exc
in view of the "
(brief of petition

This Court
proportionality te
noted that *Coker*
since *Weems* v.
the Supreme Cou
invalidate a punis
ishment Clause.[8]
in which this doc
statute. Cf. *Grah*
O'Neil v. *Vermo*

An analysis
principle necessit
ishment is "gross
crime. *Gregg* v.

Estelle, sup
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by the peti

The cr
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to say that
Furman v.
concurring)
v. *Georgia*,
the reprehe
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the present
ious posses
self-evident
Coker, supr
and one w
mankind fi

Furthe
tentional k
is not a sit
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this Court.
(White, J.,
637 (1978)
101 S.Ct. 1
companions
Crabtree (

(brief of
reached
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crime at
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"so griev
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supra, 42
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upheld b
v. *Florid*
State, 31
(1976).

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Society has a special interest in protecting certa
dividuals who may be exposed to danger more than
bers of that society generally. The previously ment
S. 114 goes so far as to make it a capital offense fo
duct which comes "dangerously close" to causing the
of the President of the United States. Obviously,
dents as well as police officers are vulnerable to death
gunshot wounds.[9] If society makes the determinatio
both groups should receive special protection by w
the imposition of the death penalty upon their assa
this Court's holding in *Roberts* v. *Louisiana*, supra,
ports the view that this judgment should be uphel

The petitioner also urges as a basis for his propo
ality argument that his emotional background shoul
vent his receiving imposition of the death penalty.
ever, *Lockett* v. *Ohio*, supra, and *Bell* v. *Ohio*, supra
held that a defendant should be permitted to presen
dence concerning his mental composition as a miti
circumstance. The State has previously set forth in
the facts relied upon by the juvenile court, the sent
court and the Oklahoma Court of Criminal Appeals
termining that the petitioner was accountable for
tions. Furthermore, while the petitioner states that th
contradicted" testimony of the chief forensic psych
of the state hospital was that petitioner's mental ag
"approximately . . . fourteen years three months [to]
teen years six months" (brief of petitioner, p. 60),
closer look at the record puts this statement in its c

The test given by the psychologist was the Wec
Adult Intelligence Test (A. 134-135). Dr. Dietsche tes
that the mental age concept under that test had "no r
ing" because "they have reached their maximum a
fifteen, and so there is no point considering a menta
of someone under sixteen" (A. 134).

Dr. Dietsche also stated that petitioner had an I
88, which was in the normal range for a sociopath (
Vol. III, 031) and that in his opinion, petitioner "ha
intelligence of an adult" (A. 136).

The petitioner requests this Court to take into ac
the fact that petitioner's "act stemmed in large part
the emotional deprivations of his chaotic childhood"
quotes extensively from expert findings concerning t
fect of emotional trauma on young persons (brief of
tioner, pp. 60-61). However, the descriptions set forth
apply to many criminals.[10] These arguments wou

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[10] The petitioner exhibited the basic characteristics of a perso
an antisocial personality. In the *American Psychiatric Association
nostic and Statistical Manual of Mental Disorders* (2nd ed. 1968
personality disorder is described as follows:

> "This term is reserved for individuals who are basically u
> ized and whose behavior pattern brings them repeatedly into
> with society. They are incapable of significant loyalty to indi
> groups, or social values. They are grossly selfish, callous, irre
> ble, impulsive, and unable to feel guilt or to learn from exp
> and punishment. Frustration tolerance is low. They tend to
> others or offer plausible rationalizations for their behavior.
> history of repeated legal or social offenses is not sufficient to
> this diagnosis. *Group delinquent reaction of childhood (or*

more properly presented to the sentencing auth
the legislature. For this Court to consider the
"chaotic childhood" in applying the constitutiona
of Eighth Amendment proportionality would d
volve this Court in the sentencing process of ev
who receives the death penalty.

The present case presents a factual and lega
in which no "bright line" exists which could
require this Court to begin making individual
decisions in virtually every capital case. See
Georgia, supra, 446 U.S. at 443 (Burger, C.J., d
In an age where persons under the age of ei
capable of the most heinous types of crimes,[11]
judgment on the punishment selected for a pers
liberately murdered a highway patrol trooper o
ways is not "grossly disproportionate" in violatio
Amendment principles.

III.

WHERE THE ISSUE OF WHETHER THE ING COURT COMMITTED ERROR BY MA STATEMENT THAT IT WOULD NOT CON TITIONER'S "VIOLENT BACKGROUND" MITIGATING CIRCUMSTANCE WAS NE SENTED TO OR CONSIDERED BY THE C COURT OF CRIMINAL APPEALS NOR S IN PETITIONER'S PETITION FOR A WR TIORARI BEFORE THIS COURT, REVIEW CONTENTION IS NOT APPROPRIATE, LARLY SINCE PETITIONER HAS FAILED THAT THE COURT'S ACTION WAS "PL CONSTITUTIONAL."

Petitioner contends that the sentencing ted "plain error" subject to review by thi Rule 34.1, *Rules of the Supreme Court of the* when it stated, during the sentencing of pe could not "consider the fact of this young background" (A. 189). The remark is as fo

> "And I want Mr. Baker, and Mr. Ed and all concerned persons to know, in case I have given very serious consi youth of the Defendant when this p was committed. Should I fail to do would not be carrying out my duty. hand, the Court cannot be persuaded youthfulness of the fact that the you years old when this heinous crime Nor can the Court in following the la ion, consider the fact that this youn

condition of mitigation — or in a
act that was committed.

"So not finding any mitigation o
fulness, and failing to find tha
softened the aggravating circumst
has found beyond a reasonable d
no alternative in this case oth
Monty Lee Eddings to death."

The petitioner claims that the alle
of this Court's decision in *Lockett* v.
(1978), but admits that this contentio
to the Oklahoma Court of Criminal A
that court in its decision affirming the
tion or mentioned in the Petition fo
filed with this Court (brief of petitio

In *United States* v. *Atkinson*, 297
the plain error rule was set forth as

"In exceptional circumstances,
cases, appellate courts, in the pu
their own motion, notice errors
tion has been taken, if the erro
they otherwise seriously affect t
or public reputation of judicial

See also Stern & Gressman, *Supreme*
(5th ed. 1978), at 460, and *Wood* v. *G*
67 L.Ed.2d 220, 226, 101 S.Ct. 1097, 1

In *Beck* v. *Alabama*, ... U.S. .....
S.Ct. 2382 (1980), this Court did re

sidered the matters raised in the
The Court held that review of peti
proper since the allegations had bee
bama courts "in some fashion." Thi
Beck was a case in which the death
in a plainly unconstitutional manne

In the present case, the State
that the contention was not raise
Oklahoma Court of Criminal Appeal
to demonstrate that he has proper
to the Oklahoma courts. See *Street*
576, 581-582 (1969). *Cf. Vachon* v
U.S. 478 (1974), where this Court
the state had not proven that petiti
tarily and intentionally" and petitio
at the trial and reversal at the ap
ground that the state had produce
this requirement. In the present
appellate brief contained no argume
that the sentencing court failed to c
gating circumstance.

This case does not present a sit
has proceeded in a manner which
tional." *Beck* v. *Alabama*, supra.
sentencing court is ambiguous, but
be drawn is that the court did n
juvenile record and family life to
stance. To adopt petitioner's reason

by the evidence of petitioner's
Constitution requires that he s
cifically holds that the senten
to "exclude, as irrelevant, e
defendant's character, prior re
offense." 438 U.S. at 604, n.1

The Oklahoma Court of
the petitioner's claims concern
lems as follows:

> "The petitioner also a
> time of the murder. He
> in saying he was sufferi
> and emotional disorders,
> actuality an inevitable
> raised. There is no dou
> personality disorder. Bu
> show that he knew the
> wrong at the time he pu
> the test of criminal resp
> *zales* v. *State*, Okl.Cr., 3
> same reason, the petitio
> in explaining why he b
> it does not excuse his

Under Oklahoma law a
evidence as to "any mitigatin
ANN. tit. 21, § 701.10 (West
case the sentencing judge all
into evidence everything he
convinced that the petitioner'

cumstance (A. 188-89). He
suade the court that other
mitigating. The remark b
sidered to constitute a *Loc*

CON

The judgment of the C
peals affirming the sentence
court should be affirmed.

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August, 1981

APP

STATUTORY

1974 OKLA. SESS. LAWS

(a) Except as
charged with havi
nicipal ordinance
but in a juvenile
act. If, during th
criminal charge a
tained that the pe
mitting the allege
nicipal court shall
the papers, docum
with, to the juven
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be taken forthwit
by the juvenile d
lease such child t
to be brought bef
nothing in this a
exercise of concu
of the district cou
volving children
violation of a sta
nance.

(b) If a child
sult of an offense
ted by an adult,
guidelines:

1. The seriousn
munity;

2. Whether the
aggressive, violen

4. Whet
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OKLA. STAT. A

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APPENDIX B

§ 3562A. Sentencing for capital offenses

(a) Hearing Required.—A person shall be subje to the penalty of death for any offense against the Un States only if a hearing is held in accordance with section.

(b) Notice by the Government.—Whenever the G ernment intends to seek the death penalty for an off for which one of the sentences provided is death, the torney for the Government, a reasonable time before or acceptance by the court of a plea of guilty, shall and file with the court, and serve upon the defendar notice (1) that the Government in the event of convic will seek the sentence of death, and (2) setting forth aggravating factor or factors which the Government seek to prove as the basis for the death penalty. The c may permit the attorney for the Government to amend notice for good cause shown.

(c) Hearing Before Court or Jury.—When the torney for the Government has filed a notice as requ under subsection (b) and the defendant is found guil or pleads guilty to an offense for which one of the sente provided is death, the judge who presided at the tri before whom the guilty plea was entered, or any judge if the judge who presided at the trial or before w the guilty plea was entered is unavailable, shall cond separate sentencing hearing to determine the punish to be imposed. The hearing shall be conducted—

(1) before the jury which determined the d dant's guilt;

(2) before a jury empaneled for the purpose o hearing if—

(C) the jury which determined the def
guilt has been discharged for good cause;

(D) after initial imposition of a sentenc
this section, redetermination of the sentenc
this section is necessary; or

(3) before the court alone, upon the motic
defendant and with the approval of the Gov

A jury impaneled pursuant to paragraph (2) of
section shall consist of twelve members, unless, at
before the conclusion of the hearing, the parties
with the approval of the court that it shall consi
number less than twelve.

(d) Proof of Aggravating and Mitigating F
Notwithstanding Rule 32(c) of the Federal Rules
inal Procedure, when a defendant is found guil
pleads guilty to an offense for which one of the
provided is death, no presentence report shall be
In the sentencing hearing, information may be
as to any matter relevant to the sentence and sha
matters relating to any of the aggravating or m
factors set forth in subsections (g), (h) and (i)
other mitigating factor. Information presented ma
the trial transcript and exhibits if the hearing is
fore a jury or judge not present during the tr
other information relevant to such mitigating or
ing factors may be presented by either the Gover
the defendant, regardless of its admissibility u
rules governing admission of evidence at crimi
except that information may be excluded if its
value is substantially outweighed by the danger
prejudice, confusion of the issues, or misleading
The Government and the defendant shall be per
rebut any information received at the hearing

death. The Government shall open the argur
defendant shall be permitted to reply. The G
shall then be permitted to reply in rebuttal. T
of establishing the existence of any aggravatin
on the Government, and is not satisfied unless
beyond a reasonable doubt. The burden of estab
existence of any mitigating factor is on the defe
is not satisfied unless established by a preponder
information.

(e) Return of Findings.—The jury, or if
jury, the court, shall consider all the informatio
during the hearing. It shall return special findi
fying whether or not any mitigating factors or
vating factors set forth in subsection (g), (h),
been found to exist. A finding of such a factor
shall be made by unanimous vote. If, in the
offense of treason or espionage, no aggravating
forth in subsection (h) is found to exist, or, in
any other offense, the aggravating factor set fo
paragraph (i)(1) is not found to exist or the
factor set forth in subparagraph (i)(1) is fou
but no other aggravating factor set forth in sub
is found to exist, the court shall impose a sent
than death, authorized by law, If, in the case o
of espionage or treason, one or more of the
factors set forth in subsection (h) is found
in the case of any other offense, the aggravatin
forth in subparagraph (i)(1) and one or more
aggravating factors set forth in subsection (i) a
exist, the jury, or if there is no jury, the court
consider whether the aggravating factor or fa
to exist sufficiently outweigh any mitigating fa
tors found to exist, or in the absence of mitiga
whether the aggravating factors are themselv
to justify a sentence of death. Based upon th

(f) Imposition of Sentence.—Upon
sentence of death is justified, the court s
defendant to death. Otherwise the cour
sentence, other than death, authorized b

(g) Mitigating Factors.—In determ
sentence of death is to be imposed on
following mitigating factors shall be co
not exclusive.

(1) the defendant was less than
age at the time of the crime;

(2) the defendants capacity to appr
fulness of his conduct or to conform h
requirements of law was significantly
so impaired as to constitute a defense

(3) the defendant was under unus
tial duress, although not such duress
defense to the charge;

(4) the defendant is punishable a
defined in section 2(a) of this title) in
was committed by another, but his
relatively minor, although not so minc
a defense to the charge;

(5) the defendant could not reas
seen that his conduct in the course o
of murder, or other offense resulting i
he was convicted, would cause, or wou
risk of causing, death to any person.

(h) Aggravating Factors for Treason
If the defendant is found guilty of or pl
offense under section 794 or section 2381
following aggravating factors shall be co

(1) the defendant has been convic

(2) in the commission of the offer
knowingly created a grave risk of sub
the national security;

(3) in the commission of the offer
knowingly created a grave risk of
person.

(i) Aggravating Factors for Homici
dant is found guilty of or pleads guilty to
for which one of the sentences provided
lowing aggravating factors shall be consi

(1) the defendant—

(A) intentionally killed the v

(B) intentionally inflicted ser
which resulted in the death of th

(C) intentionally participated
he knew or reasonably should ha
create a grave risk of death to a p
one of the participants in the offen
did die as a direct result of the act

(D) attempted to kill the
United States under the circumst
section 1751(c) of this title;

(2) the death or injury resulting
during the commission or attempted
during the immediate flight from the
tempted commission of, an offense
(prisoners in custody of institution o
794 (gathering or delivering defense
foreign government), section 844(d)
explosives in interstate commerce for
section 844(f) (destruction of Govern
explosives), section 844(i) (destructi

(3) the defendant has t
Federal offense, or a State of
of a person, for which a sen
or a sentence of death was

(4) the defendant has pr
two or more State or Fede
a term of imprisonment of
mitted on different occasions
or attempted infliction of, s
another person;

(5) in the commission of
knowingly created a grave ri
persons in addition to the v

(6) the defendant commi
cially heinous, cruel, or depr

(7) the defendant procu
offense by payment, or prom
of pecuniary value;

(8) the defendant comm
eration for the receipt, or in
ceipt, of anything of pecunia

(9) the defendant comm
stantial planning and preme
of a person or commit an ac

(10) the defendant comm

(A) the President
President-elect, the Vice
dent-elect, the Vice-Presi
is no Vice President, th
success to the office of t
States, or any person w
under the Constitution an

(D) a Federal judge, a
officer, or an employee of
correctional institution, wh
duties or because of his st
For purposes of this subse
officer' is a public servant a
Government agency or Co
gage in the prevention, inv
of an offense.

(j) Instruction to Jury on F
Justice Without Discrimination.—
fore a jury under this section, th
jury that in its consideration of
death is justified it shall not con
tional origin, creed, or sex of the
return to the court a certificate s
consideration of race, color, nati
of the defendant was not involv
individual decision.

Sec. 2. Section 34 of title 18
is amended by changing the com
prisonment for life" to a period
der of the section.

Sec. 3. Section 794(a) of tit
Code is amended by changing th
section to a comma and by addi
the words "except that the sente
imposed unless the jury or, if th
further finds that the offense di
weaponry, military spacecraft or
systems, or other means of defe
large-scale attack; war plans; co
or cryptographic information; or

Sec. 5. Section 844
Code is amended by st
section 34 of this title".

Sec. 6. Section 844
Code is amended by st
section 34 of this title".

Sec. 7. The second
title 18 of the United S
follows:

"Whoever is guilty
be punished by death o

Sec. 8. Section 111
Code is amended by str
who is found guilty of
sentenced to imprisonm

Sec. 9. Section 12
Code is amended by ins
in subsection (a) the w
son results, shall be pu
ment".

Sec. 10. The last p
of the United States C
comma after the words
and deleting the remain

Sec. 11. Subsection
the United States Cod
"Whoever attempts to k
nated in subsection (a)
(1) by imprisonment fo
(2) by death or imprisc
life; if the conduct cons
dent of the United State

Sec. 12. The second
1992 of title 18 of the U
changing the comma aft
life" to a period and dele

Sec. 13. Section 203
Code is amended by dele

Sec. 14. Section 2113
Code is amended by stri
death if the verdict of the
in lieu thereof the words
ished by death or life im

Sec. 15. Section 903
1958, as amended (49 U.S
subsection (c).

Sec. 16. The analysi
United States Code is am
the following new item:
"3562A. Sentencing for

Sec. 17. Section 356
Code is amended by addi

"In no event shall a
upon a pregnant woman

Sec. 18. Chapter 23
Code is amended by in
3741 the following new
"§ 3742. Appeal from se

"In any case in whic
under section 3562A of th
be subject to review by
by the defendant. Notice
time prescribed for appe

"On revi
consider the r
the informati
the procedure
special findin
title.

"The cou
that: (1) the
influence of p
tor; and (2)
the existence
find any mitig
3562A. In al
for reconside
court of appe
disposition of

Sec. 19.
United States
the following
"3742. Appea

Sec. 20.
title 18 of th
shall not app
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tucky mirrors the views of the nation and the wo
on the question of capital punishment for childr
Examination of the application of the death pena
to juveniles in Kentucky is particularly informat
because Kentucky is in a transition period. The leg
lature has abolished capital punishment for juveni
as of July 1, 1982 but the current death penalty l
does not prohibit this ultimate penalty for juveni
Moreover, Kentucky's Supreme Court issued a la
mark, well-reasoned decision banning life with
parole for juveniles as cruel punishment in 1968.

5. Whether a death sentence constitutes cruel a
unusual punishment when applied to a juvenile m
be determined on the basis of the evolving standa
of decency, and Kentucky's experience with the de
penalty for juveniles is clearly relevant to those ev
ing standards. Moreover, this Court has manda
that a death sentence may not be imposed in an a
trary, capricious or freakish manner, and Kentuck
experience is also relevant to that question.

6. One issue to be presented in Todd Ice's di
appeal to the Kentucky Supreme Court is whether
death sentence constitutes cruel and unusual pun
ment under the Eighth and Fourteenth Amendme
to the United States Constitution because of his ten
age at the time of the offense. That is the issue bef
this Court in this case.

WHEREFORE, Kentucky Youth Advocates a
Kentucky Office for Public Advocacy respectfu
quest this Court to permit them to file the at
brief *amici curiae* in the above-captioned case.

Respectfully submitted,

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Office for Public Advoc
State Office Building A
Frankfort, Kentucky
(502) 564-5226

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Assistant Public Advocat

J. VINCENT APRILE II
Assistant Deputy Public
Counsel for Amici

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(April 20, 1981) .....

IN THE

SUPREME COURT OF THE

October Term, 198

No. 80-5727

MONTY LEE EDDINGS, - -

v.

STATE OF OKLAHOMA, - - -

On Writ of Certiorari to th
Court of Criminal Ap

BRIEF AMICI CURIAE OF KE
ADVOCATES AND THE KEN
FOR PUBLIC ADVO

INTEREST OF KENTUCKY YOUT
THE KENTUCKY OFFICE
ADVOCACY AS AMICI

1. Kentucky Youth Advocate
class advocacy group acting on b
volved in the many different aspe
justice system from foster care
linquency proceedings and actu

Kentucky Youth Advocate
all children involved in th
ticularly with those facing
sentenced to death.

2. The Kentucky Office
resents indigent defendants
out the Commonwealth of
represented several juven
offenses and is presently re
to the Kentucky Supreme C
year old boy who was convi
for a murder allegedly com
years old.

SUMMARY OF

An examination of Kent
death penalty for juveniles
in determining whether cap
niles constitutes cruel and
tucky may be viewed as a m
it is a "middle ground" stat
law is applicable to juvenile
legislature has abolished th
under eighteen at the tim
Furthermore, Kentucky's l
constitutionality of the pen
niles in a landmark decisio

Kentucky's experienc
of capital punishment fo
Prosecutors rarely seek
niles, and juries and jud
them. Only one juvenile
the four and a half years
been in effect. His sente
disproportionate to the se
adult capital defendants
as Kentucky's experienc
death sentence will inevit
it is thus both "unusual"

Finally, life on deat
unusual punishment whi
chological damage to a ch
is eventually set aside.
and the Kentucky Office
Court to hold that Monty
constitutes cruel and u
by the Eighth and Fou
United States Constituti

ARG

**The Infliction of the Deat
Sixteen at the Time of th
Unusual Punishment Und
Amendments to the Con**

The legislature, ob
abolished capital pu
1982. However, j
penalty under Ken
stitutionality of ev
as applied to juv
tucky's highest cou
tion, struck down a
parole for the crim
juvenile.

In spite of the u
tionality of the a
death penalty law t
pursuing death sent
the young. Kentuc
tween states such
permit capital puni
as Tennessee whic
amici curiae believ
perience with the
has culminated in i
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for children by mo
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sentence to the s
capital defendant

In *Trop* v. *D*
Court emphasize
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power to punish,
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The Supreme
penalty of life w
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[2]Kentucky's expe
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In 1975, "[a]ll c
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. . ." *Id.*
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[3] *Workman*
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lowing either a jury trial or the entry of a guilty p
In fact, although Kentucky's most recent death
alty law was enacted in December of 1976 (Ky.
Stat. §§ 507.020, 532.025, 532.075 (1976)), only
juvenile, Todd Ice, has been sentenced to die in
four and a half year period.[7]

Todd Ice, who was only fifteen at the time of
alleged offense, had never been arrested previo
He was an outstanding student who lived on a f
was active in the 4-H Club and had won nume
awards at state and local fairs. Surely his being
only juvenile sentenced to death in the Commonwe
of Kentucky is exactly the sort of "wanton"
"freakish" application of the death penalty denou
in *Furman* v. *Georgia*, 408 U. S. 238, 310 (1
(Stewart, J., concurring).

Additionally, Kentucky's Supreme Court is
quired by Ky. Rev. Stat. § 523.075(3)(c) to d
mine "whether [a] sentence of death is excessiv
disproportionate to the penalty imposed in sim

[7]In recent years Kentucky prosecutors have seriously pu
the death penalty against four juveniles. Three [Robert B.
(age sixteen at time of alleged offense) and Alvin Forrest
seventeen at time of offense) in Jefferson County (Indict
Number 159102) and Pearl Stepp (age fourteen) in Harlan C
(Indictment Number 78-CR-001)] pled guilty to sentences less
death. One [Tommy Bowling (age seventeen) in Powell C
(Indictment Number 79-CR-025)] was tried by a jury and rec
twenty years although his adult brother was sentenced to

cases, considering both the crime and the defend
Of course, this statute merely implements the fe
constitutional requirement of "proportionality" i
imposition of the death sentence as required by
man v. *Georgia, supra,* and *Gregg* v. *Georgia,* 428
153 (1976).

It seems obvious that a death sentence receiv
a juvenile such as Todd Ice is "disproportionat
the non-capital sentences received by other capit
fendants in general and by all other juveniles su
to the death penalty in the Commonwealth of
tucky. Ice's sentence is as "unusual" as it is "cr
Moreover, as petitioner's brief explains, death
tences for juveniles are rare throughout our cou
Of course, the youth of the defendant must be
sidered in all jurisdictions in deciding whether t
pose capital punishment as a matter of federal
stitutional law. *Lockett* v. *Ohio,* 438 U. S. 586 (1
Bell v. *Ohio,* 438 U. S. 637 (1978). Kentucky
Advocates and the Kentucky Office for Public
vocacy submit that the death penalty can nev
constitutionally imposed on a juvenile because i
always be disproportionate to the sentences re
by adult capital defendants and the overwhelmin
jority of juveniles in similar circumstances.

D.

seek this ultimate penalty at great expens
trial courts lack the resources and perspectiv
mine whether a death sentence is disproport
a juvenile, the young are sentenced to die
wait on death row until their appeals are
Although the death sentences of many of th
niles may eventually be invalidated, *amici c*
mit that life on death row constitutes crue
usual punishment for a child.

There can be no question that a person
possibility of a death sentence experiences co
stress which may cause him to deteriorate
A person actually sentenced to die underg
psychological trauma. Johnson, R., *Under*
of Death: The Psychology of Death Row Co
5 LAW AND PSYCH. REV. 141 (1979). Sig
since 1976 four persons sentenced to death
executed (three voluntarily, one involuntari
six have committed suicide. Palmer, "De
U.S.A.," Legal Defense Fund (April 20, 198
the suicide rate exceeding the execution ra
death row inmates, there is no doubt tha
mental stress plagues even adults facing d
tences. The trauma for a juvenile is unque
far more severe.

Kentucky Youth Advocates and the Kentu
for Public Advocacy urge this Court to hol

death sentence for juveniles is absolu
by the Eighth and Fourteenth Amendm
any more children from suffering poss
psychological trauma while living on d

A look at Kentucky as a microcosm
reveals rejection by contemporary soci
penalty for juveniles as evidenced by th
courts, the legislature, prosecutors and
ing standards of decency require that
subject to capital punishment. Furth
imposition of the death penalty on juv
as to be almost nonexistent in Kent
where. Todd Ice's death sentence is a
of "lightning striking," *Furman* v. *Ge*
309 (Stewart, J., concurring), and no
sentence could be proportionate to the
tences almost invariably received by
in similar circumstances and often re
capital defendants. Thus the inflictio
sentence on Monty Lee Eddings who w
time of the offense would be cruel and
ment prohibited by the Eighth and Fou
ments to the United States Constituti

CONCLUSION

For the reasons stated above, Ke
vocates and the Kentucky Office for
as *amici curiae,* urge this Court to re
of the Oklahoma Court of Crimina
hold that Monty Lee Eddings' deat
tutes cruel and unusual punishment
Eighth and Fourteenth Amendment

Respectfully submitt

M. GAIL RO
Assistant Pu
Office For
State Offi
Frankfort
(502) 564

KEVIN MICH
Assistant Pu

J. VINCENT
Assistant De
Counsel

PROOF OF SERV

I, M. Gail Robinson, counsel fo
certify that the foregoing Motion f
Amici Curiae and Brief Amici Curi
Advocates and the Kentucky Office fo
served on Jay C. Baker, Attorney
sonally mailing three (3) copies of
to him at his office, 1850 South Bou
74119 and on David Lee, Assistant
torney for Respondent, by persona
copies of the Motion and Brief to h
112, State Capitol, Oklahoma City,

M. Gail R
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C. Baker, counsel for
consent of David W. L

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No. 80-5727

In the Supreme Cou

OF THE

United States

OCTOBER TERM, 1980

MONTY LEE EDDINGS,
Petitioner,

VS.

STATE OF OKLAHOMA,
Respondent.

**On Writ of Certiorari to the Court of Crimin
Of the State of Oklahoma**

**BRIEF OF NATIONAL COUNCIL ON CRIM
LINQUENCY, JUVENILE LAW SECTIO
NATIONAL LEGAL AID AND DEFENDE
ATION, AND AMERICAN ORTHOPS
ASSOCIATION AS AMICI CURIAE IN S
PETITIONER**

I

INTERESTS OF AMICI CUR

The National Council on Crime and Deli
is a non-profit corporation with a memb
6,300 citizens and officials. NCCD conduc
standards, and works with correctional a
professionals and citizens groups to imp
of the criminal and juvenile justice system
Aid and Defender Association (NLADA
organization whose primary purpose is to
ing effective legal services to persons unab
sel. *Amicus* NLADA Juvenile Law Section
NLADA which is concerned with the ri
American Orthopsychiatric Association
interdisciplinary organization of approxim
bers, including psychiatrists, psychologist
educators, and allied professionals con
problems, causes, and treatment of abn
including abnormal behavior of children

Amici bring to this case a well-documen
to improving the legal system's capacit
issues affecting children effectively, f
increased knowledge of children's develo
ties. All three *Amici* strongly oppose imp
punishment on children as inconsistent wi
standards of decency and humanity.[2]

---

[1]A more detailed description of each *Amicus*
forth in *Amici*'s Motion to File Brief *Amici C*
Petitioner which has been filed with the Court.

[2]This is not to imply that any *Amicus* support
as it is applied generally to adults. That issue
closed by this Court's decision in *Gregg v. Ge*
(1976).

II

THIS COURT HAS ALWAYS
SCOPE OF CONSTITUTIONAL
YOUTHS ON THE BASIS O
STATUS IN SOCIETY

This Court's recent analyses of w
alty constitutes cruel and unusual pu
increasingly upon the ability of the
the characteristics of the defendant
appropriateness of the punishment
vidual. *E.g., Furman v. Georgia,*
Woodson v. North Carolina, 42
Lockett v. Ohio, 438 U.S. 586 (1978)
that an attribute of the defendant's
important than the circumstances o
mining the cruel and unusual nature
Amici herein argue that the youth
attribute that always militates aga
the death penalty because of the hei
this Court has shown toward the
adolescents in society.[3] The con
against cruel and unusual punishm
greater protection for young peopl
to be consistent with this Court's
other settings wherein their con
implicated.

---

[3]"The Court long has recognized that
the law is unique in many respects. A
aptly put it, '[c]hildren have a very s
law should reflect'." *Bellotti v. Baird,*
(plurality opinion), *quoting May v. An*
(1953) (concurring opinion).

In analyzing the constitutional
those of adults, this Court has nev
the principle that both adults an
alike. Because youth lack the mat
experience of adults, merely exte
to youth could result in dispara
Baird, 443 U.S. 622 (1979) (plur
noted that the constitutional righ
could not be equated, in view of "
of children," and "their inability
in an informed, mature manner."
Court has not limited its view ab
to young children. "Most childr
simply are not able to make sou
many decisions . . ." *Parham v.*
(1979).[4]

---

[4]The Court has continually rejected
adolescents engage in adult activitie
fully the rights of adults. *See e.g., Pla*
v. Danforth, 428 U.S. 52 (1976); *Mi*
noma County, 49 U.S.L.W. 4273 (Ma
Baird, supra at 643-644, fn. 23, the Cou

> "Not only is it difficult to define,
> but the fact that a minor may be
> respects does not mean that hi
> growth under parental guidance

In distinguishing the rights of an ad
youth accused of criminal wrongdoing

> "[T]he greatest care must be tak
> admission was voluntary, in the
> coerced or suggested, but also th
> ignorance of rights or of adolesc
> *In re Gault*, 387 U.S. 1, 55 (1967)

This perception of youth
limit a minor's First Ame
access to reading materia
obscene for youth but not
York, 390 U.S. 629 (1968)];
minor's employment opportu
100 (1941); *Prince v. Con*
321 U.S. 158 (1944)]; and
rights that are exactly e
deciding to abort pregnan
H.L. v. Matheson, 49 U.S.
In the area of juvenile j
statutory schemes that fail
fundamental to criminal de
youth are better served by
immaturity and amenabilit
McKeiver v. Pennsylvania,
that runs throughout these
be able to exercise fully the
they avoid harm or gain son
ment phase of life. In the
execution of children simp
has been held constitutio
[*Gregg v. Georgia*, 428 U.S
undermine the well-establis
stitution specially protects
ability and immaturity.

Even in cases where the
stitutional rights of adults
applied the adult rule to the

the rights.[5] The series of
right of a young woman
revealing of the Court's t
cents. The Court has inva
either parents or a court
on the decision of a matu
an abortion. *Planned Par*
428 U.S. 52 (1976); *Bell*
sions are explicitly not p
young woman "who is o
activities is old enough to
Court was concerned tha
parental involvement or
failed to recognize the vu
influence and the "grave
minor is forced to have a

> "Indeed, considering
> ment skills, financial r

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[5]The cases dealing with co
justice setting particularly de
juvenile delinquents with fun
the Constitution, this Court h
standard to determine wheth
the status of youth by furthe
Gault, 387 U.S. 1 (1967); *In*
observance of the standard
does not compel the State to
fits of the juvenile process];
[The imposition of double j
nile court by enabling youth
without fear that evidence c
Court has thus determined
constitutional rights on the b
the protections accorded juve

unwanted moth
some for a min

The Court has rece
statute is constituti
to those young wome
because they presu
with supportive pa
abortion decisions th
the State acts in wa
rights of youth it
minor's vulnerabilit

This Court has a
rights of youth whe
the state in the crim
youth have receive
guards than adults.
(plurality opinion),
was particularly su
tactics of the polic
could not "be judg
maturity." *Id.* at 59

"This is the per
of adolescence

Similarly, in *Galleg*
Court held that the
factor in determini
and thus obtained i
The Court suggeste
adult would be inef

because "[h]e ca
possession of his
quences of his ad

This Court has
of the death pena
of rehabilitation .
and "renunciation
of humanity" [*Fu*
(Stewart J. conc
the penalty of dea
The execution of
ment of societal
to compensate fo
and judgment. It
humanity's future
tential of today's

**THE DEATH PE
INHUMANE
LESCENT CH
EXPERIENCE
WHICH CHA**

Amici share th
adolescence is a d
Adolescents are

"'[T]he penalty
tence of imprisonm
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U.S. 280, 305 (1976

are far mor
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adolescents

In 1967 a
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Crime in a
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Wolfgang,
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F. Zim
Twenti
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Crime

Of course, many juveniles continue to engage in serious criminal activity after they become adults. *See, Delinquency in a Birth Cohort, supra.* However, the evidence does strongly suggest that a significant amount of youth crime is age-related, reflecting the impulsiveness, the defiance of authority, and the vulnerability to peer pressure which typify adolescence.

Childhood in this country has been extended by the decline of the working family as a unit of economic production. The prolongation of education, removal of children from the labor market by means of compulsory education and child labor laws, and the emergence of age-graded schools created a separate world of youth in which the "teenager" and youth culture appeared. A. Skolnik, *The Limits of Childhood: Conceptions of Child Development and Social Context,* 39 Law and Contemporary Problems, No. 3 at 38, 62-3 (Summer 1975). Adolescence is also a time when young persons are frequently struggling to arrive at a definition of their own identity; adolescents are particularly likely to rebel against adult authority and to seek affirmation by their peers. *See,* E. Erickson, *Childhood and Society,* 261-63 (2d Ed. 1963).

> "The American adolescent, struggling with the biological and psychological pressures of youth, seeks status and reassurance in the company of his peers. Rebellion against parental authority and restrictions is combined with pressure to conform to the expectations of other adolescents. The teen years are a period of experiment, risktaking, and bravado. Some criminal activity is part of the patterns of almost all youth subcultures." F. Zimring, *supra,* at 3.

By the time a child attains age fifteen or sixteen, he has generally achieved significant cognitive ability, and is able to deal with abstract concepts and ideals. J. Piaget, *The Moral Judgment of the Child* (1932). Nevertheless, a child's ability to think abstractly and to engage in mature judgment continue to develop further into late adolescence and early adulthood. *See,* M. Rutter, *Changing Youth in a Changing Society* 83 (1980); E. A. Peel, *The Nature of Adolescent Judgment* 131-134 (1971). Of particular significance is the considerable body of research which demonstrates that a person's ability to think in moral terms and to engage in moral judgments develops significantly during middle and late adolescence, reaching a plateau only after leaving school or reaching early adulthood. *See, e.g.,* J. Rest, M. Davison, and S. Robbins, *Age Trends in Judging Moral Issues: A Review of Cross-Sectional Studies of the Defining Issues Test,* 49 *Child Development* 263 (1978); L. Kohlberg, "Development of Moral Character and Moral Ideology", in Hoffman and Hoffman, *Review of Child Development Research* 404-05 (1964). The ability to make moral judgments depends, at least in part, on broader factors of social experience. Most adolescents simply do not have the breadth and depth of experience which are essential to making sound value judgments and to understanding the long-range consequences of their decisions. *See,* Kohlberg, *supra,* at 404-05; Rutter, *supra,* at 238; C. Lewis, *A Comparison of Minors' and Adults' Pregnancy Decisions,* Vol. 50, No. 3 Amer. J. of Orthopsychiatry 446 (1980) [minors making abortion decisions are less likely than adults to consider effects of having a child on the quality of their lives].

Recognizing that adolescence is a turbulent pathway o
the road to maturity, our system of juvenile justice—whil
holding minors responsible for their misconduct—has als
acknowledged that the level of juvenile responsibility i
lower than for adults. *See,* President's Commission on La
Enforcement and Administration of Justice, *Task Forc
Report: Juvenile Delinquency and Youth Crime* 41 (1967
[cited hereafter as *Task Force Report*]. Distress with th
retributive nature of the criminal justice system and lon
prison sentences given children led directly to the passag
of the first juvenile court act in Illinois in 1899, and to th
rapid spread of the juvenile court system to all state
except Maine and Wyoming during the next thirty-fiv
years. *See, In re Gault,* 387 U.S. 1, 14-15 (1967); Fo
Juvenile Justice Reform: An Historical Perspective, 2
Stan. L. Rev. 1187 (1970). The philosophical premise u
derlying the juvenile court system was that misbehavin
children, lacking maturity and an adult sense of respons
bility, ought to be helped—not punished. A. Platt, *Th
Child Savers: The Invention of Delinquency* (1969); *I
re Gault, supra,* at 16.

In addition to a humanitarian compassion for offende
who are children, the juvenile court system was predicate
on the belief that because of their youth and malleabilit
children are more likely subjects for successful interventio
than older and, presumably, more hardened offenders. *Tas
Force Report,* at 9; J. Mack, *The Juvenile Court,* 23 Har
L. Rev. 104, 119-20 (1909). Although acknowledging th
juvenile court's failures, this Court in *McKeiver v. Pen
sylvania,* 403 U.S. 528 (1971), attributed the system's de
ficiencies to inadequate resources, knowledge, and will (*I*

at 544), pointedly refusing to jettison the rehabilitat experiment,

> "'. . . both because it is civilized and because soc protection itself demands constant search for alt natives to the crude and limited experiment of condc nation and punishment.'" *Id.*, n. 6, 546, quoting fr *Task Force Report*, at 9.[7]

In *Haley v. Ohio*, 332 U.S. 596 (1948), this Court ap recognized,

> "Age 15 is a tender and difficult age for a boy of a race. He cannot be judged by the more exacting sta ards of maturity." *Id.* at 599.

More recently, a distinguished Task Force of juver justice experts[8] echoed this sentiment in finding th "[m]any forms of youth crime are a product of the spec pressures and vulnerability of adolescence." *Report of Twentieth Century Fund Task Force on Sentencing Pol Toward Young Offenders, Confronting Youth Crime* (1978). The Task Force concluded that although you

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[7]Similar considerations led in 1950 to passage of the Fed Youth Corrections Act [18 U.S.C. § 5010 *et seq.*] under wh youths between the ages of 16 and 22 were made eligible for cial treatment. The Act was designed to provide a better met of treating young offenders in a "vulnerable age bracket," and rehabilitate them and restore normal behavior patterns." *szynski v. United States*, 418 U.S. 424, 433 (1973).

[8]The Task Force included such well-known juvenile justice sc ars and experts as Allan Breed, former director of the Califc Youth Authority; Franklin Zimring, director of the Center Studies in Criminal Justice, University of Chicago; Peter B. E man, New York State Commissioner of Youth Administration; tine Wise Polier, retired judge of the New York State Family C and Marvin E. Wolfgang, director of the Center for Studie Criminology, University of Pennsylvania.

offenders should be held legally responsible for int
criminal harms,

> ". . . they deserve less punishment because ad
> have less capacity to control their conduct and
> in long-range terms than adults . . . . Moreove
> crime . . . represents a failure of family, sch
> the social system, which share responsibility
> development of America's youth." *Id.*

The litany of articles, studies, reports, and bo
cussed herein attest to what *Amici* believe is an ine
conclusion: adolescents are developmentally distin
adults. While not devoid of judgment and contr
equally unrealistic to treat young offenders as if t
fully mature judgment and control." *Id.* The deve
of a rehabilitative model of juvenile justice in this
reflected an appreciation for adolescents' di
responsibility and culpability emanating from th
perience, impulsiveness, and lesser capabilities
range thinking and moral judgments. To execute a
even the most reprehensible conduct is inconsist
our knowledge of adolescent behavior and culpabi
ultimately, with a system of civilized and humane

IV

CERTIFICATION OF A MINOR FOR TRIAL IN COURT DOES NOT INDICATE THAT A MI MATURE, SOPHISTICATED, OR SHOU TREATED IN OTHER WAYS AS THOU WERE AN ADULT

A child does not cease to be a child simply beca
certified for trial in adult court. Under Oklahon

sixteen year-old child, like petitioner, who h
fied and tried in criminal court is still subj
abilities of minority. He cannot marry with
of a parent or guardian (43 Okl. St. Ann. §
vote (Okl. Const. Art. 3, § 1); he cannot p
(21 Okl. St. Ann. § 1215); he cannot consent
health professionals unless he is married,
services for dependent children (63 Okl. Stat.
he cannot donate blood without parental p
Okl. Stat. Ann. § 2512); and he may disaffirm
except for "necessaries" (15 Okl. Stat. Ann.

Since Oklahoma law continues to treat
almost all purposes as a child, it cannot p
maintained that his certification transforms h
child to adult. Certification altered the fo
petitioner was tried and the statutory pena
he was subject. However, as *Amici* will de
decision to certify petitioner for criminal pr
not tantamount to a determination that petit
ture, sophisticated, or "hardened."[9]

At the time that petitioner was certifie
trial, the Oklahoma certification statute enu

---

[9]Many state statutes authorize transfer of mi
than 16 years old to adult court for criminal prose
Ind. Code § 31-6-2-4(b)(c)(d) [ten year old min
murder may be waived to adult court]; 37 Ill. A
[age 13]; Miss. Code 1972 Ann. § 43-21-157 [ag
Law § 30.00 [age 13 for murder; age 14 for specifi
ies or attempted violent felonies].

criteria governing the certification decision
criteria relate to the seriousness of the offe
in which the offense was committed, and
merit of the complaint. The last criterio
likelihood of rehabilitating the offender an
public. Only guideline six concerns charac
of adults or adult behavior, namely the defe
tication" and "maturity". Under the then

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[10] 10 Okl. Stat. Supp. 1976 § 1112(b) stated in
"If a child is charged with delinquency as a
which would be a felony if committed by a
shall consider the following guidelines:

1. The seriousness of the alleged offense
2. Whether the alleged offense was commi
sive, violent, premeditated or willful manne
3. Whether the offense was against per
greater weight being given to offenses aga
cially if personal injury resulted;
4. Whether there is prosecutive merit to the
5. The desirability of trial and disposition o
in one court when the juvenile's associat
offense are adults;
6. The sophistication and maturity of the
mined by consideration of his home, envir
emotional attitude and pattern of living;
7. The record and previous history of the
previous contacts with community agencies
agencies, schools, juvenile courts and other
periods of probation or prior commitment
tutions; and
8. The prospects for adequate protection
the likelihood of reasonable rehabilitation
he is found to be guilty of the alleged offe
procedures and facilities currently availab
court."

fication statute, it was permissible to
adult court, even if unsophisticated a
of the seriousness of the offense, the
the lack of adequate resources within
or because of a perceived need to inc
beyond his nineteenth birthday, whic
sible if he were sentenced in juvenil
Stat. Supp. 1977 § 1102(A).

The Oklahoma case law construing
1976 § 1112(b), and the predecessor C
statute, clearly demonstrate that em
and maturity have been rejected as
certifying a youth to adult court. In *S*
P.2d 598 (Okl. Crim. App. 1973), the

> "The contention that before there
> tification there must be a showing
> advanced emotional maturity an
> greater than his chronological ag
> out foundation in the provisions
> *Id.* at 601.[11]

The Court found that in order to cer
necessary under either the statute o
demonstrate that the juvenile ". . .
wrong as would a nineteen or twenty
Id. at 602.

---

[11]Although the certification statute in S
emotional maturity as a specific certi
believe it is significant that the Oklahoma
maturity or sophistication need not be s
the then applicable certification stand
capable of knowing right from wrong, a
able for his acts. *Id.* at 601.

In *Matter of Smith*, 548 P.2d 647
which involved the same statute un
certified to adult court, the court
of the juvenile is simply one consi
court's guidance. Certification may
ant's age, demeanor, background,
alleged criminal acts. *Id.* at 648. In
P.2d 273 (Okl. Crim. App. 1977)—
cal certification statute implicated
court relied on two factors in certi
minors to adult court: first, the
grams available to the juvenile co
present security problems and re
ment; and second, the lack of suffi
habilitation in a juvenile facility si
juvenile courts must be discharg
at 275.[12]

Of greatest significance, the Okl
Appeals specifically upheld the
based on his age and the unavaila
ment resources available to the C

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[12] *Amici's* extensive experience with
has demonstrated that inadequate res
to effectuate rehabilitation are frequent
of minors for criminal prosecution. Se
A Rationale for the Abolition of the
Waive Jurisdiction, 7 Pepperdine 937,
Juvenile Court Jurisdiction Under Ic
Act, 29 Drake L. Rev. 405, 428-29 (1
Criminal Courts: A Substantive Vie
23 U.C.L.A L. Rev. 988, 1004, 1007-0

Matter of M.E., 584 P.2d 1340 court did not rule that petitio as a juvenile given adequate a ruling would have been con certification hearing. *Id.* at that the length of time which tutional care, and the unavail resources within the juvenile for a decision to certify a mi *Id.* at 13437.

Amici have previously argu child development demonstra cent children lack the maturi to engage in long-range think the impulse-control which ar Nothing in the record in this ing below, or in the Oklahon suggests that this conclusion The trial court's decision to prosecution was not based o mature, sophisticated, harde and resources—beyond the

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[13]Point III, *supra*.

[14]To the contrary, the record "sane", petitioner was acutely parents' marriage; and that he the trigger, believing that he w father, who was a policeman. 1169-70 (Okl. Crim. App. 1980).

the juvenile court.[15] The cert
simply meant that the trial
could adequately rehabilitat
public with the resources an

Amici believe that imposi
children who are retained wit
would clearly be unconscion
premises underlying the fou
Execution of a 16 year old
considered any more appro
state juvenile justice system
ate facilities and treatment p
[*see, McKeiver v. Pennsylva*
to effectuate his rehabilitatio

EXECUTION OF CHILDRE
AND REJECTED BY M
WORLD

In deciding whether imp
constitutes "cruel and unu
meaning of the Eighth Am

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[15]One study has found that ju
oners and are low rate recidi
Safeguards for Juvenile Transfe
Kent v. United States, 26 DePau
erally agreed that although ther
repeated delinquency and later
to predict accurately adult crir
juvenile delinquency. E. Wenk,
Violence be Predicted, 18 Crime

quently looked to his
mate of internationa
433 U.S. 584 (1977).
ern opinion in the W
that state-sanctioned
humane, and contrar
attitudes which the l
dren.

While executions c
mon law, public opp
penalty for persons
spread in England by
United States indica
and only one child yo
in this country, the
February, 1965 a G
percent of the person
for murder, only 23 p
years of age. Erskine
Pub. Opinion Q. 290
Public Opinion and
1245, 1250 (1974). S

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[16]J. Laurence, *A His*

[17]W. Bowers, *Execut*
ages referred to are t
death; however, becaus
time when there was
review, defendants' ag
instances—vary apprec
offenses were committe

sition of the death p
Penal Code[19] and th
the Criminal Law,[2
punishment for chil

Executions of ch
throughout most of
President Carter s
Civil and Political
the Covenant abolis
18 years of age. The
fied by 73 nations.[21
of the American Co
of San Jose) also fo
on persons under 1
signed by twelve co
been ratified by Colu

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[18]Cal. Pen. C. § 19
[under 18]; Nev. Rev.
Ann. 1974 630:1(v) [
Art. 18-14 (1980 Cum.
[under 19]; Tenn. Co
15 or under 18 wher
at least nine other sta
[Alaska, Hawaii, Id
Dakota, West Virginia

[19]ALI, Model Penal

[20]National Commis
Draft of the New Fed

[21]*See*, D. Weissbr
Covenant, 63 Minn. L
has not yet acted on

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Georgia, 40
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[22]Amnesty

[23]*Id.*, Adde

[24]These in
Republic, Hu
dom of Gre
British Virgi
Guatemala, a

progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

CONCLUSION

For the above-stated reasons *Amici* urge this Court to reverse the judgment of the Court of Criminal Appeals of the State of Oklahoma insofar as it upheld the imposition of the death penalty on petitioner.

Dated: June 3, 1981

Respectfully submitted,

ROBERT L. WALKER
JAMES B. MORALES
Attorneys for Amici Curiae

Of Counsel:
MARILEE ALLAN

MOTION FILED
AUG 14 1981

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 80-5727

MONTY LEE EDDINGS,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

MOTION OF THE WASHINGTON LEGAL FOUNDATION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE*, THE WASHINGTON LEGAL FOUNDATION

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August 12, 1981

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IN THE

SUPREME COURT OF THE UNITED STATI

OCTOBER TERM, 1981

No. 80-5727

MONTY LEE EDDINGS,

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v.

STATE OF OKLAHOMA,

Respondent.

MOTION OF THE WASHINGTON LEGAL FOUNDATION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

The Washington Legal Foundation (WLF or Found tion) moves this Court pursuant to Supreme Court Rul 36 and 42 for leave to file the annexed brief *amicus cu iae* in the above-captioned proceeding in support of t State of Oklahoma. Counsel for Petitioner has been co tacted and refused to consent to WLF's participatio Counsel for the State of Oklahoma has also been co tacted and takes no position on WLF's motion.

The Washington Legal Foundation is a nonprofit, ta exempt public interest law firm organized and existi under the laws of the District of Columbia for the pu

pose of engaging in matters affecting the broad
interest. WLF has more than 80,000 members a
porters throughout the United States whose i
the Foundation represents.

The Washington Legal Foundation has appeared
this Court as *amicus curiae* on numerous occasion
amicus curiae have been filed with and accepted
Supreme Court in the following recent cases: *Wil
Zbaraz*, 100 S.Ct. 2694 (1980); *Consolidated Edi
of New York v. Public Service Commission of th
of New York*, ___ U.S. ___ , 100 S.Ct. 2326
United Steel Workers v. Weber, 443 U.S. 193
Carbon Fuel Company v. United Mine Workers, 4
939 (1979); *Personnel Administrator of Mass. v.*
442 U.S. 322 (1979); *Parklane Hosiery Co. v. Sho*
U.S. 323 (1979); *Federal Trade Commission v. S
Oil Co. of California*, ___ U.S. ___ , 100 S.Ct. 62
San Diego Gas and Electric Co. v. City of San D
U.S.L.W. 4306 (1981); *Rostker v. Goldberg*, 49 U
4798 (1981); *Moody v. Forresster*, ___ U.S. ___
S.Ct. 1733 (1981); *First National Maintenance*
NLRB, 49 U.S.L.W. 4762 (1981).

More specifically, WLF participates in and
a substantial portion of its resources to matter
criminal justice and related constitutional issues.
concern for the physical, psychological, and fina
pact crime has on its victims, their families, and
has led to the Foundation's establishment of
Victims Program. This program is designed to
the rights of crime victims and to help reduce th
ing crime rate in America. Among other a
WLF provides legal guidance and assistance to
tims of violent crime, participates in rulemak
ceedings before the U.S. Parole Commission, a

itors those criminal cases in which the courts hav
too lenient in sentencing violent criminals or
wise have exhibited an insensitivity to the rights
tims and the general public.

In the instant case, WLF seeks to advance the i
of its members and the public by urging this
consideration of the rights of law-abiding citize
victims of violent crime, and of the States in pro
their citizens from murders and other acts of extre
lence. The Foundation believes that the States n
permitted to establish their own capital puni
guidelines within the meaning of the Eighth and
teenth Amendments of the Constitution and th
Oklahoma statute in question is thus a legitima
stitutional response to the brutal murder of a law e
ment official.

WLF can bring to this case a perspective not pr
represented which may assist in obtaining full co
ation of public interest issues. The present parties
case are primarily concerned with the end results
lawsuit. WLF is concerned with the broader publi
est issues indicated above and in providing a bal
the arguments in this case. WLF's concern in this
to protect the rights of any State to impose puni
within established constitutional guidelines in o
protect society from violent and repetitive crimin
duct.

Accordingly, the Washington Legal Fou
fully requests permission to participate a
in the case at bar.

Respectfully submitte

Daniel J. Popeo
General Counsel

Paul D. Kamenar
Director of Litigati

Nicholas E. Calio
Litigation Counsel

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(A. 66) When Officer Crabtree signalled Eddings to pull off the road, he did so. Eddings then asked for the sawed-off shotgun which was on the front floorboard. However, the passenger in the front seat with Eddings placed the gun behind the driver's seat. (A. 34)

Nevertheless, petitioner reached behind the seat for the sawed-off shotgun and loaded it. (A. 65) Meanwhile, Officer Crabtree unsuspectingly approached the car from behind. When the officer was six to eight feet away, Petitioner tilted the gun out the window and unloaded the blast into Officer Crabtree's chest. (A. 54) Officer Crabtree died within a matter of seconds to minutes. (A. 23)

Petitioner immediately drove off, but was arrested a short time later. (A. 34) While in custody, he threatened the lives of other police officers on two separate occasions. (A. 77, 103)

Pursuant to Oklahoma law, Petitioner was certified to stand trial as if he were 18 years of age, pleaded *nolo contendere,* and was sentenced to death after a full and fair hearing on all mitigating and aggravating circumstances surrounding the killing.

Petitioner now challenges his sentence solely on the ground that he was not quite 18 years old at the time of the murder, and therefore, is protected by the Eighth Amendment.

SUMMARY OF ARGUMENT

Petitioner's argument that capital punishment can never be constitutionally imposed upon a criminal who is under the age of eighteen at the time of his or her crime lacks merit. The Oklahoma statute under which Petitioner was sentenced provides clear sentencing guidelines as well as automatic appellate review of any sentencing

decision. In addition, it provides for consideration of "any" factors mitigating the crime, including the criminal's age.

Imposing capital punishment on Petitioner does not constitute "cruel and unusual punishment" under the Eighth Amendment solely because of his age. Age has never been adjudicated a preclusive bar to punishment and Petitioner here was properly certified to stand trial and be punished as an adult for the premeditated, unprovoked murder of a police officer. In imposing the death penalty, the State court amply considered the offender's age and extensive psychological testimony and concluded that his age, although a mitigating factor, did not outweigh the aggravating factors. This Court should not second guess the State court on this score.

The adoption of an absolute bar to capital punishment based on age as suggested by Petitioner would be inconsistent with previous decisions of this Court and would interfere with the legislative prerogatives of the States. Such a decision would effectively nullify the power of the States to decide matters within their sphere of influence and would limit the ability of the States to protect their law-abiding citizens. Therefore, this Court should uphold the sentence imposed upon the Petitioner based upon the facts of the instant case as a matter of sound public policy.

ARGUMENT

I.

OKLAHOMA'S CAPITAL PUNISHMENT STATUTE WHICH IS NEITHER ARBITRARY NOR CAPRICIOUS AND WHICH PROVIDES FOR INDIVIDUALIZED SEN TENCING AND AUTOMATIC REVIEW, SATISFIES THE REQUIREMENTS OF THE EIGHTH AMENDMENT AS APPLIED TO PETITIONER.

Petitioner argues that the Eighth Amendment's pro bition against "cruel and unusual punishment" acts as absolute bar to imposing the death penalty on any m derer who – regardless of past criminal conduct, frame mind, and the heinous nature of the murder committed happens to be less than age eighteen at the time the m der was committed. Resolution of that question in P tioner's favor would at once require a rejection of principles previously announced by this Court in de penalty cases and deny the States the practical ability decide criminal matters of State concern within bounds of the United States Constitution.

The Oklahoma capital punishment statute under wh Petitioner was sentenced satisfies the constitutional st dards mandated by this Court under the Eighth Amen ment. It provides clear sentencing guidelines and proc ures as well as automatic appellate review of the sente ing decision. While the sole issue in the case at ba whether a valid death penalty statute is constitution applicable to a sixteen year old killer who was prop certified to stand trial as an adult, it is useful to bri review this Court's previous pronouncements on the c stitutionality of death penalty statutes as a framew for examining the application of the Oklahoma law Officer Larry Crabtree's murderer.

Petitioner's argument that the death penalty may n be constitutionally imposed upon a murderer who

under age eighteen at the time of his crime lacks merit i light of the previous decisions of this Court. This Cour has repeatedly recognized that a capital punishmen statute passes constitutional muster if certain factors ar present. *Gregg v. Georgia*, 428 U.S. 153 (1976); *Profit v. Florida*, 428 U.S. 242 (1976); *Jurek v. Texas*, 428 U.S 262 (1976); *cf. Roberts v. Louisiana*, 428 U.S. 32 (1976); *Lockett v. Florida*, 438 U.S. 586 (1977); *Bell v Ohio*, 438 U.S. 637 (1978). The statute must focus "o the particularized nature of the crime and the particula ized characteristics of the individual defendants," an take into account "the main circumstances of aggrava tion and of mitigation that *should be weighed, an weighed against each other* . . ." to avoid arbitraty impo sition of the deaty penalty. *Gregg v. Georgia, supra*, a 153, 206 (Citing Model Penal Code §201.6, Comment p. 71, Tentative Draft No. 9) (emphasis in original) Moreover, the additional safeguard of direct appellat review ensures that capital punishment will not be arb trarily or capriciously imposed. *Id.* at 196-198. *See also Profitt, supra; Jurek, supra; Roberts, supra; Locket supra.*

In *Profitt*, 428 U.S. 242, the Court summarized it reasons for upholding Florida's death penalty statutes i language which is instructive here:

> That legislation provides that after a person is convicted of first degree murder, there shall be an informed, focused, guided, and objective inquiry into the question whether he should be sentenced to death. If a death sentence is imposed, the sentencing authority articulates in writing the statutory reasons that led to its decision. Those reasons . . . are conscientiously reviewed by a Court which . . . can assure . . . the evenhanded operation of state law. *Id.* at 259-60.

Similarly, the Court in *Jurek*, 428 U.S. 262, fou

> By authorizing the defense to bring before t
> at the separate sentencing hearing whateve
> gating circumstances relating to the ind
> defendant can be adduced, Texas has ensur
> the sentencing jury will have adequate guid
> enable it to perform its sentencing functio
> providing prompt judicial review of the jury
> sion . . . Texas has provided a means to p
> the evenhanded . . . imposition of death sen
> *Id.* at 276.

The Oklahoma statute clearly falls within t
stitutional guidelines. First, it provides for "
focused, guided, and objective inquiry" into
sition of the death penalty. *Profitt, supra*, at 2
21 O.S. Supp. 1978, Section 701.10 expressly
sentencing proceedings for first degree murder
the sentencing hearing is bifurcated from th
allow the defendant or the State to present evi
argument pertinent to the penalty. Evidenc
presented as to *any* mitigating or aggravatin
stances. Moreover, aggravating circumstances
latively defined in Section 701.12 of the stat
Section 701.13 specifically enumerates jur
tions. If the jury is unable to agree on the pu
the judge *must* impose life imprisonment.
701.11. Thus, rather than allowing the "standa
unchanneled imposition of death sentences," c
found infirm in *Godfrey v. Georgia*, ___ U.S.
S.Ct. 1759, 1765 (1980), Oklahoma has pro
sentencing authority with firm, explicit guidelin

Oklahoma's statute also requires that a deat
be appealed within ten days following the t
decision. In accordance with this Court's g

Jurek, Oklahoma's immediate, direct appeals "provide[s] a means to promote the evenh imposition of death sentences." 428 U.S. at 2 the Oklahoma statute does not suffer from constitutional infirmities previously recogniz Court and no sound reason can be advanced f ing its application in the instant case.

Simply stated, Oklahoma's statute confor constitutional safeguards mandated by this cannot by its terms be applied in a discrimin ner whether on the basis of sex, race, or age. below amply considered Petitioner's age and he was still subject to the death penalty. The statute is neither arbitrary nor capricious as ap

II.

IMPOSING CAPITAL PUNISHMENT ON A MU WHO WAS UNDER THE AGE OF EIGHTEEN TIME OF HIS CRIME DOES NOT CONSTITUT AND UNUSUAL PUNISHMENT.

The imposition of capital punishment on who was not quite eighteen years old at the crime does not violate the Eighth Amendm Constitution. Age, in and of itself, has never b

---

[1] Under Title 21 O.S. Supp. 1978 §701.13, th Court of Criminal Appeals is required to determine:

1) whether the sentence of death was imposed influence of passion, prejudice, or any other factor;

2) whether the evidence supports the . . . judge' of a statutory aggravating circumstance as en in this Act; and

3) whether the sentence is excessive or disprop to the penalty imposed in considering both and the defendant.

cated a preclusive bar to punishment addition, it has long been recognized be transferred to adult courts to be tri Indeed, punishment of certain juvenil consistent with well-established socie case at bar, imposition of capital pu excessive nor disproportionate in light mitted and the defendant's attitude a Petitioner's sentence is fully consisten of the Eighth Amendment and must Court.

A. Neither Certification of This C as an Adult Nor the Subsequer a Capital Sentence Under the C This Case Violate Any Previous stitutional Principle.

Amicus submits that neither certifi derer for trial as an adult under a car tory scheme nor the subsequent imp sentence violate any previously annou principle. This Court has refused to pect class" under the Constitution. *of Retirement v. Murgia*, 427 U.S. 3(*Bradley*, 440 U.S. 93 (1979). In ad considered a criminal's biological ag than a mitigating factor to be cons sentences on a murderer. *Roberts v.* 325, 333-34; *Lockett v. Ohio*, 438 U.

Similarly, this Court has never fou criminal alone transforms an other punishment into a "cruel and unu *Ingraham v. Wright*, 430 U.S. 657 stated that the Cruel and Unusual Pur

its the punishment which can be in
three ways:

> First, it limits the punishment tha
> on those convicted of crimes . . . se
> punishment grossly disproportiona
> of the crime . . . and third, it im
> limits on what can be made crimi
> as such. 430 U.S. at 667.

Nowhere in those standards is there
punishment of non-suspect classes o
man v. Georgia, 408 U.S. 238, 240
concurring). *See also Spinkellink*
F.2d 582, 616 (5th Cir. 1978), *cert.*
reh. den. 441 U.S. 938 (1979).

A favorable resolution of Petiti
impose inflexible rules upon the crim
of the States. *See Barker v. Wingo,*
25 (1972). While Petitioner's cer
not in issue here, it bears noting tha
recognized that "not all juveniles c
special features of the juvenile cou
transfer to an adult court should b
v. Jones, 421 U.S. 519, 535 (1975)
v. Pennsylvania, 403 U.S. 528, 5
United States, 383 U.S. 541 (1966
cation of a juvenile to stand trial a
imate aspect of the juvenile code. . .
616 P.2d 1162, 1166 (Okl. Crim.
of M.E., 584 P.2d 1340 (Okl. Crim
denied, 436 U.S. 921 (1978).

That some juveniles may be pro
and indeed, must be tried as adul
tect society, is underscored by the
States have statutory systems for

niles" as adults in criminal pr
tioner at 46, 57. As a prac
invalidate Petitioner's sentence,
add new, inconsistent dimens
nouncements on the constitu
ishment and the meaning of
ment. Moreover, this Court
nullify the right of the States
biological juveniles have acted
and punished as adults for the
lic. Therefore, the Washingt
mits that public policy consid
Court, consistent with its past
[Petitioner] was certified to
was certified to be punished
State, supra, at 1166.

**B. Imposition of Capital Pu
Accords With Societal St
Interest.**

Petitioner's claim that sent
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scrutiny. Certainly, the A
lightly impose capital punish
Nonetheless, an examination
reflect society's " 'evolving
Gregg, 428 U.S. at 173, indi
been forced to conclude th
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v. Dulles, 356 U.S. 86 (1958).

Recent public surveys pro
of Petitioner's claim. On Jun
published a nationwide poll in
questioned favored wider us

TIME, June 1, 1981 at 13, col
Gallup Poll published in the *W*
that 66 percent of the public fa
in 1981 as opposed to 49 perce
TON POST, June 26, 1981 at A-

Perhaps the most telling indi
on capital punishment is found
by the various States. In the
Court's decisions in *Furman v.*
and *Gregg*, 428 U.S. 153, thirty-
penalty statutes. *Eddings v. Sta*
Presently, the number of States
laws remains at thirty-five. Brie
89.[2] Only six of those States sta
tion of the death penalty on t
biological age. *Id.* at 53, n.8
States, a sixteen-year old is subj
ceedings and, therefore, capital
may be a factor to be consider
tence, it is not an absolute ba
Thus, these State statutes reflec
that certain individuals who are
capable of possessing the judgm
of those individuals who *are* 18.[3]

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[2]Ohio recently passed a new capita
INGTON POST, July 17, 1981 at 13,

[3]Public sentiment on the death p
by Federal legislative activity. The
ently considering S. 114, a bill to
establishing "rational criteria for the
97th Cong., 1st Sess. (1981). S.114
ment may be imposed in cases in whi
age of majority. The bill includes co
age as a mitigating factor, but does n
bar to capital punishment. S.114, §3

Public sentiment about
age of 18 as if they were 1
of violent juvenile crime.
this growing problem sub
and trial. By virtue of a
Supp. 1978, §1104.2, Ok
and seventeen year olds w
tried as adults.

Likewise, the legislature
uncontrollable incidents of
by passing the Juvenile Ju
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Juveniles: The New York
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One scholar, in discussin
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year olds, notes that:

> . . . developmental ps
> supports this legislative
> mon law judgment tha
> acquired the requisite
> for their criminal acts .
> which a youth become

therefore, a serious
mid to late teens
old).

Feld, *Juvenile Court*
Offender: Dismantli
MINN. L. REV. 167,

Recent research also
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court system:

It is well known th
proportionately large
. . the rate at which
lent crimes – homici
has been growing fa
adults are arrested f
which youths aged s
for violent crimes n
1975. . . . In Chicag
fifteen to twenty-fou
icides nearly tripled
homicide rate for
and over) and for w

Boland and Wilson,
Public Interest 22, 2

Although juvenile hon
are less likely to be
Hence, many scholars
niles as adults in order

Further, young of
involved in criminal act
statistics show that for
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**C. The Death P
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Petitioner's sen
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this Court stated:

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> of capital pun
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> offender, we
> invariably disp
> U.S. at 187.

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> interpretation that heinous means extremely wicked or shockingly evil; that atrocious means outrageously wicked and vile; and, that cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. What is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capital felonies . . . [283 So.2d 1, 9 (1973)]. *Profitt*, 423 U.S. at 251.

The manner in which Larry Crabtree was murdered and his identity as a peace officer sets his killing apart from the "norm of capital felonies".

Patrolman Crabtree no doubt believed he was making an ordinary traffic stop consistent with his duty to keep the highways safe for the public. After waving Petitioner's stolen car to the side of the road, Larry Crabtree simply approached Petitioner's vehicle. Petitioner's own words alone at that time justify the court's findings. He murdered Larry Crabtree for no other reason than:

> If the fucking cop harasses me, I'll shoot him. (Tr. 127).

Petitioner, of course, never learned whether Patrolman Crabtree was going to "harass" him. Instead, petitioner slowly reached behind his seat for the shotgun he had earlier sawed off and which a passenger had even attempted to put out of his reach. The petitioner loaded it, stuck it out the window, and fired it unprovoked into the chest of Larry Crabtree. Without looking back, Petitioner drove away stating:

> I would rather have shot an Officer than go back to where I live. (A. 93).

Clearly, the callous murder in question here is as cold-blooded as those examined by this and other Courts. *See, e.g., Profitt, supra; Dobbert v. Florida,* 432 U.S. 282 (1977); *Roberts v. Louisiana,* 431 U.S. 633 (1978); *Spinkellink v. Wainwright, supra,* 578 F.2d 610-612.

WLF also believes that the aggravating nature of Petitioner's crime is magnified by Larry Crabtree's position as a police officer. This Court has implicitly recognized that the imposition of the death sentence on the murderer of a peace officer is not disproportionate to the crime. In striking down a Louisiana capital punishment statute that made the death sentence mandatory if the victim was a police officer, this Court nonetheless noted:

> To be sure, the fact that the murder victim was a peace officer performing his regular duties may be regarded as an aggravating circumstance. *There is a special interest in affording protection to these public servants who regularly must risk their lives in order to guard the safety of other persons and property.*
>
> *Roberts v. Louisiana,* 431 U.S. 633, 636-37 (1978) (Emphasis added).

While the Oklahoma statute does not expressly provide that the killing of a police officer is an aggravating circumstance, the appellate court correctly found that:

> this killing of a peace officer in the performance of his duties was, . . ., 'shockingly evil' . . .
>
> *Eddings v. State,* 616 P.2d 1168.

Amicus Washington Legal Foundation believes that the State of Oklahoma properly considered this Court's ruling in *Roberts* and determined that it has a special interest in protecting peace officers. Nationwide, the

number of law enforcement officers killed in the line o duty is rising. FBI Reports at 309. In 1979, 106 peac officers were feloniously killed as compared to 93 i 1978. *Id.* From 1970 to 1979, 1,143 officers wer killed while performing their duties. *Id.* Officer Crab tree was one of them.

In addition, recent data indicates that over a te year period as many as 348 officers died in situation which parallel that in which Officer Larry Crabtree wa murdered. A total of 92 officers were killed whil investigating suspicious circumstances and persons; 6 died in premeditated ambush; 50 died in unprovoke attacks; and, 144 died in traffic pursuits. *Id.* at 310 Moreover, of the total number of law enforcemen officers that died over the same ten year period, 1,07 or 94.3 percent were killed by firearms. *Id.* at 312.

A closer breakdown of peace officer homicides show an overall increase in the number of persons *under* ag 18 who have been identified as having killed a peac officer. More precisely, 116 persons *under* age eigh een murdered peace officers between 1970 and 197 *Id.*

The unprovoked and premeditated murder of Office Larry Crabtree is reflected in these statistics. As wit other cases of law enforcement officer fatalities, littl consideration has been given throughout these proceed ings to what should be the major issue. Neither the Bri for Petitioner nor the briefs of *amici* in support of Pet tioner provide a single mention of the rights of Lar Crabtree, his family, his friends, the community i which he lived and worked, or society in general. Mon Eddings executed Larry Crabtree in violation of his mo fundamental right. The physical, psychological, a

economic impact of such violent crimes cannot be accurately measured, but neither can the magnitude of the cost be denied. *See* Exec. Order No. 4831, 42 Fed. Reg. 21339 (April 10, 1981) (Proclaiming National Victim's Rights Week, 1981); Annual Report to the American Bar Association by the Chief Justice of the United States, 67 ABA J. 291 (March, 1981).

The courts below also found that the crime was committed for the purpose of avoiding a lawful arrest, *Eddings v. State*, 616 P.2d 1168-69, and that Petitioner constituted a continuing threat to society. *Id.* at 1169. The latter is of particular concern here.

Petitioner's claim that he "had no serious record of criminal behavior" (Brief for Petitioner at 21) best indicates the frame of reference which he brings to this case. As the Oklahoma appellate court noted, "petitioner had an extensive juvenile record." 616 P.2d at 1169. He was involved in four break-ins, tampering with a motor vehicle, mail box vandalism, and an assault with intent to do bodily harm. (A. 105-107, 118). His statements after the murder of Larry Crabtree compounded that record. Speaking to police officers on two separate occasions he stated:

> Now I have shot one of you people, and I'll get you too if you don't turn this light out. (A. 103)
>
> * * *
>
> If I get loose I would shoot you all too. (A. 77, 82)

Thus, notwithstanding Petitioner's age, the record upholds the lower courts' findings that Petitioner constituted a continuing threat to society.

The courts below also considered the circumstances mitigating Petitioner's crime. He presented four professional witnesses at the sentencing portion of his trial.

Those witnesses testified as to Petitioner's pa
history, intelligence, maturity, and mental
See Eddings v. State, 616 P.2d 1169-70. Non
that Petitioner knew right from wrong at th
pulled the trigger. *Id.* Similarly, a psychiat
psychologist who testified at the certificatic
on behalf of the State found "that the juvenile
difference between right and wrong and was
understanding his actions." *In Re Matter of*
P.2d 1340, 1343 (Okla. Crim. App. 1978), *ce*
436 U.S. 921 (1978).

In short, Petitioner has had ample oppo
urge mitigating circumstances. However, as
homa appeals court found, the mitigating fa
insufficient to overcome the starkly brutal na
crime:

> the trial court found only one – the pet
> youth. As stated earlier, the District Co
> cated great weight had been given to thi
> but, nevertheless, found it could not ove
> the aggravating circumstances of the case.
> have given serious consideration to the pet
> youth. But the aggravating circumstance
> case are very serious; and we, too, have to c
> that the petitioner's youth cannot outweig
> 616 P.2d 1170.

Amicus, the Washington Legal Foundatio
that the decisions below accord in every re
the previous decisions of this Court. Based u
inous testimony and first hand observation
nesses, the trial court found that Petitioner w
subject to capital punishment. The appeal
viewed all of the evidence, carefully weighed a
factors, and found that the punishment fit th

the criminal. With all due respect, a contrary de
this Court would make a mockery of its previ
sions and the conscientious efforts of the State
form their criminal sanctions to the dictates of
stitution.

III.

ADOPTING AN ABSOLUTE BAR TO CAPITAL P MENT WOULD BE CONTRARY TO PUBLIC POL AN UNWARRANTED JUDICIAL INTERFERENC LEGISLATIVE PREROGATIVES.

In essence, Petitioner is ask g this Court to
previous pronouncements on the constitutionali
ital punishment statutes. Beginning with the *G*
sion, this Court has established a framework fo
decision-making in death penalty cases which
balancing a variety of factors to ensure that a
complies with the Eighth Amendment. Ad
absolute bar to capital punishment solely on
of age would undercut the validity of this Co
vious decisions and move it beyond judicial
ations into a realm properly left to State an
legislatures.

The Court has recognized that its role in de
application of capital punishment is limited. In *M*
v. California, 402 U.S. 183 (1971), the Court
through Justice Harlan that:

> In light of history, experience and the
> limitation of human knowledge, we find i
> impossible to say that committing to the u
> meled discretion of the jury the power to pro
> life or death in capital cases is offensive to a
> in California. *The States are entitled to assu*
> *jurors confronted with the truly awesome*
> *sibility of decreeing death for a fellow hum*

> *act with due regard for the conse*
> *decision and will consider a variet*
> *For a court to attempt to catalog*
> *factors in this elusive area could in*
> *expand the scope of consideratio*
> *circumstances would ever be reall*
> infinite variety of cases and fac
> would make general standards ei
> 'boiler-plate' or a statement of the
> jury would need. (emphasis added)

402 U.S. 207-08.

In according due deference to the
ture, this Court has stated:

> . . . in assessing a punishment sel
> cratically elected legislature agai
> tional measure, we presume its val
> heavy burden rests on those who
> representations of the people.

Gregg, supra, 428 U.S. at 175.

Yet, petitioner suggests no other r
fact of his age to support invalidatin
homa's legislative determination. Th
the trial and appellate courts impo
death sentence in a clear case of fi
accord with a carefully-crafted statu
turning the Oklahoma statute and e
lute age below which no death sente
simply is not warranted by the arg
the Petitioner in the case at bar. As t

> The value of capital punishmen
> crime is a complex factual issue
> which properly rests with the legis
> evaluate the results of statistical s

their own local conditions and with a
approach that is not available to to the

Gregg, supra, at 186.

Moreover, such line-drawing would ha
far beyond the instant case; it would a
twenty-eight State statutes as well as th
lation presently under consideration wh
both the trial of certain juveniles in adu
ceedings and the death sentence in capital

It cannot be disputed that the State
right and responsibility to protect their
deem appropriate within constitutional
courts must protect individual rights, th
their focus become blurred to the fact t
justice system must protect both the rig
and the rights of each individual law-abi
circumscribing the States' ability to
punishment beyond the dictates of th
cases, this Court would effectively remo
of the legislatures to make decisions wh
within their realm. Thus, this Court m
tioner's sentence as a matter of sound pub

CONCLUS

The Washington Legal Four
court below correctly sustaine
death penalty in this case. The
Petitioner is especially heinou
slaying of peace officers strik
society's ability to protect itse
penalty statute is a constitutio
under these circumstances reg
Petitioner was not biologically

Respect

Dani
Gene

Paul
Dire

Nich
Litig

W
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Su
W
August 12, 1981 (2

**Amicus* wishes to express its ap
Fadden, a legal intern, for her assis
brief.